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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 24, 2001, from 9:00 a.m. to Noon (E.S.T.)

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

Technical Amendments to Office of Government Ethics Freedom of Information Act Regulation: Change in Decisional Officials

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is amending its Freedom of Information Act (FOIA) regulation to indicate a change in OGE decisional officials thereunder.

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending its FOIA regulation to indicate a restructuring of decisional authority for handling FOIA requests, appeals and related matters that OGE receives as a Federal agency. The OGE FOIA Officer (instead of the OGE General Counsel) now will decide initial access requests and related matters such as fees. Further, the OGE General Counsel (instead of the OGE Deputy Director) will decide administrative FOIA appeals.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these amendments. The notice, comment and delayed effective date provisions are being waived because these technical FOIA regulation amendments concern matters of agency organization, practice and procedure.

Executive Order 12866

In promulgating these minor amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed ''significant'' thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of information, Government employees.

Approved: January 9, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics, pursuant to its authority under the Ethics in Government Act and the Freedom of Information Act, is amending 5 CFR part 2604 as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 2604.103 is amended by removing the definition of ''*General Counsel*'', and by adding a new definition, for ''*FOIA Officer*'', to read as follows:

§ 2604.103 Definitions.

FOIA Officer means the OGE employee designated to handle various initial FOIA matters, including requests and related matters such as fees.

* * * * *

§§ 2604.301, 2604.302, 2604.303, 2604.305, 2604.402 [Amended]

3. Sections 2604.301(a) and (b)(2), 2604.302(a) and (d), 2604.303(a), (b) (introductory text) and (b)(2), 2604.305(a)(1) and (a)(2), and 2604.402(c) (introductory text), (c)(2), (e) (introductory text), (e)(3), (f), (g)(1) and (g)(4) are amended by removing the words ''General Counsel'' wherever they appear and adding in their place in each instance the words ''FOIA Officer''.

§ 2604.304 [Amended]

4. Section 2604.304(a) is amended by removing the words ''Deputy Director'' between the words ''the'' and ''of'' and adding in their place the words ''General Counsel''.

[FR Doc. 01–1170 Filed 1–12–01; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2089–00]

RIN 1115–AE73

Additional Authorization To Issue Certificates for Foreign Health Care Workers; Speech-Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Immigration and Naturalization Service (Service), to enable the Commission on Graduates of Foreign Nursing Schools (CGFNS) to issue certificates to aliens seeking admission as, or adjustment of status to permanent residents on the basis of the following occupations: Speech language pathologist and audiologists, medical technologist (also known as ''clinical laboratory scientist''), physician assistant, and medical technician (also known as ''clinical laboratory technician''). The Service has consulted with the Department of Health and Human Services before promulgating this interim regulation. This rule ensures that foreign health care workers have the same training, education and licensure as similarly employed United States workers.

DATES: *Effective Date:* This interim rule is effective March 19, 2001.

Comment date: Written comments must be submitted on or before March 19, 2001.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference the INS No. 2089–00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

What Are the Provisions of 8 U.S.C. 1182(a)(5)(C)?

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law No. 104–208, section 343, 110 Stat. 3009, 636–37 (1996) created a new ground of inadmissibility now codified at 8 U.S.C. 1182(a)(5)(C), section 212(a)(5)(C) of the Immigration and Nationality Act (Act). It provides that an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from CGFNS or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services (HHS) verifying:

(1) that the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic and, in the case of a license, unencumbered;

(2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and,

(3) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination. Section 212(r) of the Act mandates separate certification procedures for certain aliens.

How Has the Service Implemented 8 U.S.C. 1182(a)(5)(C)?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the Service met and conferred with HHS, the Department of Labor (DOL), the Department of Education (DOE), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and the Department of State (DOS) to reach consensus on the best approach for implementation. In addition to meetings among the affected agencies, several meetings were held with interested organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

The Service in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of 8 U.S.C. 1182(a)(5)(C). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as ''clinical laboratory scientist''), medical technicians (also known as ''clinical laboratory technicians'') and physician assistants. Upon the suggestion of HHS, this rule lists the alternative terms ''clinical laboratory scientist'' and ''clinical laboratory technician'' to reflect both the legislative history and current health professions categorizations.

After weighing the complexity of the implementation issues, anticipating the length of time for rule making, and considering the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public, the DOS and the Service agreed to exercise their statutory discretion under 8 U.S.C. 1182(d)(3), section 212(d)(3) of the Act, and have granted a blanket waiver of inadmissibility to nonimmigrant health care workers until final regulations are promulgated. The blanket waiver of inadmissibility applies to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification pursuant to 8 U.S.C. 1184(e), section 214(e) of the Act (TN classification). The Service published an interim rule (First Interim Rule) in the **Federal Register** on October 14, 1998 at 63 FR 55007 in which the adoption of this policy regarding nonimmigrant health care workers was announced. The First Interim Rule amended 8 CFR part 212 and 245. A formal application or fee is not required for a nonimmigrant health care worker to obtain the waiver. Nonimmigrant health care workers are admitted on a multiple entry Form I–94 for 1 year. In addition, otherwise admissible dependents are also authorized admission into the United States for the specific dates of stay authorized for the principal alien. A new waiver is not required if the nonimmigrant health care worker makes an application for admission to the United States during

the validity period of the previously issued Form I–94. Nonimmigrants applying for TN classification are not required to pay the admission fee described at 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued Form I–94. Finally, nonimmigrant health care workers are eligible for extensions of the waiver and corresponding extensions of stay in increments of 1 year.

The Services has issued two interim rules implementing the certification requirements of section 212(a)(15)(C) of the Act with respect to immigrant health care workers. The First Interim Rule, previously referenced, and a Second Interim Rule which was published in the **Federal Register** on April 30, 1999 at 64 FR 23174. The Second Interim Rule also amended 8 CFR part 212.

What Were the Provisions of the 1st and 2nd Interim Rules?

The First Interim Rule temporarily enabled CGFNS to issue certificates to immigrants coming to the United States to work in the field of nursing, and temporarily authorized NBCOT to issue certificates in the field of occupational therapy. The Service adopted the First Interim Rule without the notice and comment period ordinarily required by 5 U.S.C. 553 because it found that delay in the implementation of 8 U.S.C. 1182(a)(5)(C) could adversely affect the provision of health care, particularly in medically under-served areas for nursing and occupational therapy. Given this context, the Service identified two criteria for the selection of certifying organizations on a temporary basis:

(1) That a sustained level of demand for foreign workers for the particular occupation exists; and

(2) That an organization with an established track record in providing credentialing services exists.

The First Interim Rule defined the term ''sustained level of demand'' as the presence of an existing demand for foreign health care workers in a particular occupation that is expected to continue in the foreseeable future. The term ''organizations with an established track record'' was defined as an organization which has a record of issuing actual certificates, or documents similar to a certificate, that are generally accepted by the state regulatory bodies as certificates that an individual has met certain minimal qualifications. The Service found, on the basis of information provided by DOL, that there was a sustained level of demand for foreign workers in nursing and occupational therapy. After consultation with HHS, CGFNS and NBCOT were found to qualify as organizations with an established track record in providing credentialing services for nursing and occupational therapy respectively. As required by 8 U.S.C. 212(a)(5)(C), the rule also established the appropriate English language competency levels for foreign nurses and occupational therapists, and specified exemptions from English language proficiency testing.

The First Interim Rule provided that the Service would apply the two criteria to other organizations seeking authorization to issue certificates while the interim rule remained in effect. Finally, the Service deferred consideration of whether CGFNS is authorized to issue certificates for other health care occupations.

The Second Interim Rule temporarily enabled CGFNS to issue certificates to immigrants coming to the United States to work in the fields of occupational therapy and physical therapy, and temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates in physical therapy. As with the First Interim Rule, the Service adopted the Second Interim Rule without the notice and comment period ordinarily required by 5 U.S.C. 553 because it found that delay in the implementation of 8 U.S.C. 1182(a)(5)(C) could adversely affect the provision of health care in medically under-served areas. The Service, in consultation with HHS, evaluated CGFNS' and FCCPT's applications for authorization to issue certificates under the criteria promulgated by the First Interim Rule. The Service found that both CGFNS and FCCPT met the ''establishment or proven track record'' criterion. With respect to the second criterion, the Service relied on its findings in the First Interim Rule to conclude that there was a sustained level of demand for occupational therapists. In addition, after considering data compiled by DOL, the Service concluded that there was a sustained level of demand for physical therapists that could adversely affect the provision of health care in medically under-served areas. The Second Interim Rule also established the appropriate English language competency levels for physical therapists.

Why Is the Service Promulgating a Third Interim Rule To Implement 8 U.S.C. 1182(a)(5)(C)?

After careful consideration, the Service believes that it is in the public interest to temporarily adopt this rule without notice and comment procedures, and that it would be impracticable to do otherwise. The Service will invite post promulgation comments to this temporary rule. In addition the Service anticipates publishing a Notice of Proposed Rule Making (NPRM) within the next 6 months.

The IIRIRA was a major, complex legislative scheme, which significantly changed existing immigration law and imposed many administrative duties upon the Service. Many provisions of the IIRIRA, including section 343 became immediately effective. The Service had a tremendous responsibility to rapidly promulgate numerous regulations implementing the new provisions of the law. Since enactment of the IIRIRA, the Service has diligently worked on an NPRM to implement 8 U.S.C. 1182(a)(5)(C) via ordinary notice and comment procedure, but has experienced considerable administrative difficulty in coordinating the needs and concerns of the large number of federal agencies and private interested parties affected by 8 U.S.C. 1182(a)(5)(C). Several substantive issues require the technical expertise of other agencies and further consultation before they can be definitively addressed. For example, the provisions of 8 U.S.C. 1182(a)(5)(C) may affect United States obligations under international treaties to facilitate the movement of professionals. Second, the Service is required to further define which, if any, other health care occupations fall under the ambit of the statute. Because of the delays in promulgating the larger rule, the Service believes the promulgation of this regulation as an interim rule is imperative to enable the Service to execute its adjudicative functions and to eliminate a growing backlog of pending immigrant applications filed by aliens seeking to immigrate to the United States as speech language pathologists and audiologists, medical technologists, physicians assistants and medical technicians. The Service has held such immigrant petitions in abeyance until promulgation of implementing regulations and as a result, certain immigrant health care workers have suffered extended periods of separation from family members and petitioning employers have been forced to operate without needed employees.

What Criteria Will the Service Use To Evaluate Organizations Applying for Authority to Issue Certifications?

The Service will continue to use the ''proven track record'' criterion previously promulgated in the First and Second Interim Rules. The legislative history of the IIRIRA indicates that the factors to be considered for selection of

credentialing organizations are the following (1) the independence and freedom of material conflicts of interest of the organization regarding whether an alien receives a visa; (2) whether the organization has the ability to evaluate credentials and English competency; (3) whether the organization maintains comprehensive and current information on foreign educational institutions; and (4) whether the organization can conduct examinations outside of the United States. *See* H.R. REP. NO. 104–828 at 227 (1996). The Service intends to fully address each of these factors in the NPRM. However since this is a temporary rule, the Service believes that the ''proven track record'' criterion adequately addresses the factors outlined in the legislative history.

After careful consideration, the Service has decided it will not use the ''sustained level of demand'' criterion utilized in the First and Second Interim Rules. As discussed *supra,* the Service promulgated those interim rules under the rationale that failure to process immigrant petitions for certain health care occupations would adversely affect the provision of health care in medically under-served areas. Given that rationale for promulgation of those interim rules, ''sustained level of demand'' was initially an important consideration in the approval of credentialing organizations. In contrast, the Service is promulgating this interim rule because it has experienced tremendous administrative difficulty in promulgating permanent regulations due to the complexity of the issues to be addressed, and because the Service is unable to execute its adjudicative functions with respect to a growing backlog of petitions without an implementing regulation. Therefore, ''sustained level of demand'' is not a relevant consideration at this time because the Service is unable to execute its adjudicative function with respect to these occupations.

What Is the Purpose of This Interim Rule?

The purpose of this interim rule is to provide notice that CGFNS may issue certificates pursuant to section 212(a)(5)(C) of the Act, on a temporary basis, to foreign health care workers coming to the United States as immigrants or applicants for adjustment of status to work in the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants, and medical technicians (clinical laboratory technicians).

This rule does not establish procedures for the Service to accept certificates issued by CGFNS or equivalent credentialing organizations to aliens seeking temporary admission to the United States to perform services in a health care occupation. An alien's application for admission as a nonimmigrant will be processed pursuant to the Service's temporary policies previously described.

This interim rule also lists the passing scores for the English language tests for the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants, and medical technicians (clinical laboratory technicians). This interim rule also amends the regulations concerning what organizations may administer the English language tests to reflect recent changes concerning one of the testing organizations.

Has CGFNS Shown That It Has an Established Track Record?

Based on consultations with HHS, the Service finds that CGFNS has an established track record in issuing certificates for speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants and medical technicians (clinical laboratory technicians). In addition to 20 years of experience in evaluating the credentials of foreign nurses, CGFNS has experience beyond nursing with regard to educational comparability and credentials evaluation. CGFNS has an extensive database covering health-related academic programs in foreign countries, much of which is applicable beyond nursing. Finally CGFNS, through their credential evaluation service, has evaluated foreign credentials, including educational degrees and foreign licenses for psychiatric technicians, physician assistants, emergency medical technicians and other occupations. With the establishment of ''Professional Standards Committees'' CGFNS has developed certification standards that may be used to assess comparability for the occupations of speech language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants and medical technicians (clinical laboratory technicians).

What Are the Passing English Test Scores for Speech-Language Pathologists and Audiologists, Medical Technologist (Clinical Laboratory Scientists), and Physician Assistants?

In order to obtain a certificate, the alien must demonstrate to the credentialing organization that he or she has passed either the English tests given by the Educational Testing Service or the Michigan English Language Assessment Battery (MELAB). In order to obtain a certificate an alien must be competent in written, oral, and spoken English.

The HHS has determined that speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), and physician assistants must obtain the following scores on the English tests administered by the Educational Testing Service (ETS): Test of English as a Foreign Language (TOEFL): paper-based 540, computer-based 207; Test of Written English (TWE): 4.0; Test of Spoken English (TSE): 50.

The HHS has determined that speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), and physician assistants must obtain the following scores on the English tests administered by the Michigan English Language Assessment Battery (MELAB): Final Score 79; Oral Interview 3+. It is noted that, effective June 30, 2000, the MELAB Oral Interview Speaking Test is no longer being given overseas and is only being administered in the United States and Canada. Applicants may take MELAB Parts 1, 2 and 3, plus the TSE offered by the ETS. In addition, the exemptions for the English language tests described in § 212.15(g)(2) apply to the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), and physician assistants.

What Are the Passing English Test Scores for Medical Technicians (Clinical Laboratory Technicians)?

In order to obtain a certificate, the alien must demonstrate to the credentialing organization that he or she has passed either the English tests given by the Educational Testing Service or the Michigan English Language Assessment Battery (MELAB). In order to obtain a certificate an alien must be competent in written, oral, and spoken English.

The HHS has determined that medical technicians (clinical laboratory technicians) must obtain the following scores on the English tests administered by ETS: TOEFL: paper-based 530, computer-based 197; TWE: 4.0; TSE: 50.

The HHS has determined that medical technicians (clinical laboratory technicians) must obtain the following scores on the English tests administered by the MELAB: Final Score 77; Oral Interview 3+. Again, the MELAB Oral Interview Speaking Test is no longer being given overseas and is only being

administered in the United States and Canada. Applicants may take MELAB Parts 1, 2 and 3, plus the TSE offered by the ETS. In addition, the exemptions for the English language tests described in § 212.15(g)(2) apply to the occupation of medical technicians (clinical laboratory technicians).

What Aliens Are Exempt From the English Tests?

According to § 212.15(g)(1), aliens who have graduated from a college, university, or professional training school located in Australia, Canada, (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirement.

Does This Interim Rule Alter Any of the Service's Policies With Respect to the Admission of Nonimmigrant Health Care Workers?

No, this rule enables CGFNS to issue certificates to foreign health care workers seeking admission as immigrants or adjustment of status in the occupations previously discussed. It does not alter any of the Service's policies with respect to the admission of nonimmigrant aliens coming to perform services in health care occupations that were described in the first interim rule.

How Does This Rule Amend the Existing Regulation?

This interim rule amends the regulation at § 212.15(c) by adding the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants, and medical technicians (clinical laboratory technicians) to the list of occupations.

This interim rule also amends the regulation at § 212.15(e) to add the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants, and medical technicians (clinical laboratory technicians) to the list of occupations for which CGFNS can issue certificates.

Finally, this interim rule amends the regulation at § 212.15(g) to list the passing English scores for the occupations of speech-language pathologists and audiologists, medical technologists (clinical laboratory scientists), physician assistants, and medical technicians (clinical laboratory technicians). This interim rule further amends the regulations at § 212.15(g) by describing the changes in testing that have been instituted by MELAB.

Good Cause Exception

This interim rule is effective 60 days from the date of publication in the **Federal Register**, and the Service invites post-promulgation comments to be weighed and considered in the forthcoming NPRM. For the following reasons, the Service for good cause finds that it is in the public interest to temporarily adopt this rule without notice and comment procedures, and that it would be impracticable to do otherwise.

First, the Service has diligently worked on an NPRM for 8 U.S.C. 1182(a)(5)(C), but has experienced considerable administrative difficulty in coordinating the needs and concerns of the large number of federal agencies and private interested parties affected by 8 U.S.C. 1182(a)(5)(C). Several substantive issues, including how the provisions of 8 U.S.C. 1182(a)(5)(C) affect United States obligations under international treaties, and how to define which occupations fall under the ambit of the statute, require the technical expertise of other agencies and further consultation before they can be definitively addressed.

Second, the Service believes that promulgation of this regulation as an interim rule is imperative to enable the Service to execute its adjudicative functions with respect to pending immigrant applications filed by aliens seeking to immigrate to the United States as speech language pathologists, medical technologists, physician assistants and medical technicians. Such immigrant applications have been held in abeyance until promulgation of implementing regulations resulting in a backlog. Further, because these immigrant applications have been held in abeyance, certain immigrant health care workers have unfortunately suffered extended periods of separation from family members and petitioning employers have been forced to operate without needed employees. In the long term, the Service's continued policy with respect to these immigrants could have the unintended consequence of chilling future immigration of alien health care workers in these occupations.

While the Service plans to issue an NPRM in 6 months that covers more than this interim rule, it does not anticipate speedy promulgation of a final rule due to the numerous public comments expected in response to the NPRM. In light of this, the Service finds that it would be contrary to the public interest to continue to hold these immigrant applications in abeyance pending final rules when the admission or adjustment of these aliens under temporary procedures will only serve to benefit the public health.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. The health care workers who will be issued certificates are not considered small entities as the term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under E.O. 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information required on the certificate for health care workers showing that the alien possesses proficiency in the skills that affect the provision of health care services in the United States (as provided in § 212.15(f)) is considered an information collection that has been approved for use by the Office of Management and Budget (OMB) under OMB control number 1115–0226. It is estimated that the number of respondents will increase as a result of adding the five additional health care occupations listed in § 212.15(c). Accordingly, the Service will submit an adjustment form to OMB increasing the total annual burden hours.

List of Subjects in 8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.15 is amended by:

a. Adding new paragraphs (c)(4) through (c)(7);

b. Revising paragraph (e)(1);

c. Revising paragraph (g)(3)(i); and

d. Adding new paragraphs (g)(4)(iv) and (g)(4)(v), to read as follows:

§ 212.15 Certificates for foreign health care workers.

* * * * *

(c) * * *

(4) Speech-Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians).

* * * * *

(e) * * *

(1) The Commission on Graduates of Foreign Nursing Schools may issue certificates pursuant to 8 U.S.C. 1182(a)(5)(C), and section 212(a)(5)(C) of the Act for the occupations of nurse (licensed practical nurse, licensed vocational nurse, and registered nurse), physical therapist, occupational therapist, speech-language pathologist and audiologist, medical technologist (clinical laboratory scientist), physician assistant, and medical technician (clinical laboratory technician).

* * * * *

(g) * * *

(3) * * *

(i) Michigan English Language Assessment Battery (MELAB). Effective June 30, 2000, the MELAB Oral Interview Speaking Test is no longer being given overseas and is only being administered in the United States and Canada. Applicants may take MELAB Parts 1, 2, and 3, plus the Test of Spoken English offered by the Educational Testing Service.

* * * * *

(4) * * *

(iv) *Speech-language pathologists and Audiologists, medical technologists (clinical laboratory scientists), and physician assistants.* An alien coming to the United States to perform labor as a speech-language pathologist and audiologist, a medical technologist (clinical laboratory scientist), or a physician assistant must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(v) *Medical technicians (clinical laboratory technicians).* An alien coming to the United States to perform labor as a medical technician (clinical laboratory technician) must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

Dated: November 28, 2000.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–1203 Filed 1–12–01; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG54

List of Approved Spent Fuel Storage Casks: FuelSolutions Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the FuelSolutions cask system to the list of approved spent fuel storage casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the FuelSolutions cask system to the list of approved spent fuel storage casks in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of subpart L, BNFL Fuel Solutions submitted an application for NRC approval with the Safety Analysis Report (SAR) entitled, ''Final Safety Analysis Report for the FuelSolutions Spent Fuel Management System.'' The NRC evaluated the BNFL Fuel Solutions submittal and issued a preliminary Safety Evaluation Report (SER) and a proposed Certificate of Compliance (CoC) for the FuelSolutions cask system. The NRC published a proposed rule in the **Federal Register** (65 FR 42647; July 11, 2000) to add the FuelSolutions cask system to the listing in 10 CFR 72.214. The comment period ended on September 25, 2000. Two comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the NRC has modified, as appropriate, the CoC, SER, SAR, and the Technical Specifications (TS) for the FuelSolutions cask system.

The NRC finds that the FuelSolutions cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR Part 72, Subpart L. Thus, use of the FuelSolutions cask system as approved by the NRC will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the FuelSolutions cask system under the general license in 10 CFR part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on February 15, 2001. Single copies of the final CoC and SER will be available by January 30, 2001 for public inspection and/or copying for a fee at the NRC Public Document Room (PDR),11555 Rockville Pike, Rockville, Maryland 20852 and electronically at *http://ruleforum.llnl.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* The public can gain entry from this site into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. An electronic copy of the final CoC, Technical Specifications, and SER for the FuelSolutions cask system can be found in ADAMS under Accession No. ML003759247. However, because the NRC must incorporate the date of publication of this **Federal Register** notice into the CoC, these documents are not yet publicly available. The NRC will make these documents publically available by January 30, 2001. Contact the NRC PDR reference staff for more information. PDR reference staff may be reached at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Summary of Public Comments on the Proposed Rule

The NRC received two comment letters from one commenter within the nuclear industry on the proposed rule. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852 and electronically at *http://ruleforum.llnl.gov.*

Comments on the FuelSolutions Cask System

The comments and responses have been grouped into four subject areas: Safety Evaluation Report (SER), Certificate of Compliance (CoC), Technical Specifications (TS), and Safety Analysis Report (SAR). The NRC's decision to list the FuelSolutions cask system within 10 CFR 72.214, ''List of approved spent fuel storage casks,'' has not been changed as a result of the public comments. A review of the comments and the NRC's responses follow:

A: Safety Evaluation Report

Comment A–1: The commenter requested that within the Draft Safety Evaluation Report, Section 4.1, under BFS Methodology for Calculating Maximum Allowable Cladding Temperature, a clarifying statement be added, stating that for PWR and BWR fuel assemblies with burnups under 45,000 MWD/MTU cladding oxide thickness measurement is not required. The commenter remarked that the last sentence in the sixth paragraph of this section notes that the strain limit is defendable for spent fuels having oxide thicknesses less than 70 micrometers, irrespective of burnup. The last paragraph of this section states that for fuel with burnups between 45,000 and 60,000 MWD/MTU the cladding thickness must be measured. A statement that this is not required for fuels with burnups less than 45,000 MWD/MTU would clarify the requirements for lower burnup fuels.

Response: The NRC agrees with the proposed clarification, and the SER has been revised to add a sentence stating that oxide measurements are not required for burnups below 45,000 MWD/MTU.

Comment A–2: The commenter requested an editorial clarification within the Draft Safety Evaluation Report, Section 5.1.1, noting that in the first sentence of the first paragraph, the term ''steel-lead-water-steel'' includes a redundant term ''steel.'' The composite shielding of the transfer cask includes the three materials listed (*i.e.,* steel-lead-water).

Response: The NRC agrees with the proposed clarification and the SER has been revised accordingly.

Comment A–3: The commenter requested an editorial clarification within the Draft Safety Evaluation Report, Section 5.3.1, where under Adjoint Model, the word ''discrete'' is misspelled.

Response: The misspelled word has been corrected.

Comment A–4: The commenter stated that within the Draft Safety Evaluation Report, Section 8.1.4, the time values listed in the fifth, sixth, and seventh sentences are for the W21 canister. The values for the W74 canister are seven hours, four hours, and four hours, respectively. The commenter requested that the SER be revised either to clarify that the values shown are for the W21 canister or to report the values for both canisters explicitly.

Response: NRC agrees with the comment. Section 8.1.4 of the SER has been revised for clarity. Values for both canisters have been stated explicitly.

Comment A–5: The commenter stated that within the Draft Safety Evaluation Report, Section 8.3, the general actions for canister unloading listed in the second sentence are not in the actual sequence of operations as reported in the WSNF–200 SAR, Section 8.2.3. The commenter requested that to avoid confusion, the sentence be revised to list the actions in sequence, as follows:

(a) Move the action ''lowering the cask into the pool'' to after the action ''removing the canister lid.''

(b) Change ''removing the canister lid'' to ''removing the canister lids'' (note that there are two lids—inner and outer).

(c) Add ''removing the shield plug'' before ''and removing the fuel assemblies from the storage basket.''

Response: The NRC agrees with the comment and the SER has been revised to clarify the sequence of actions.

Comment A–6: The commenter requested that within the Draft Safety Evaluation Report, editorial clarifications be made in Section 10.3.2, third paragraph as follows:

(A) Fourth sentence—per WSNF–200 SAR Table 10.4–8, the dose rate listed

is calculated for one year. The dose for 30 days would need to be factored from the values presented as follows: Take 1/12 of the 64 cask accident direct and of the 63 cask normal release, then add the 1 cask accident release (approx. 931 mrem for 30 days). This comment also affects the conclusion statement in the eighth sentence.

(B) Fifth sentence—per WSNF–200 SAR Section 10.4.3, the maximum transfer cask loss of neutron shield accident dose is 25.3 mrem per 24 hours, not per hour.

(C) Sixth sentence—delete the words ''of the WSNF–200 SAR'' from the end of the sentence. The NRC staff's review is documented in the SER, not the WSNF–200 SAR.

(D) Seventh sentence—the 751 mrem dose was calculated for the bone, not the lung.

Response: The NRC agrees with the comments:

(A) The dose rate was calculated for a one year period. The SER has been revised to state that the maximum dose at 100 meters is about 2900 mrem from the storage cask array, assuming an individual is present for a year, for accident conditions. This sentence is now in agreement with the eighth sentence.

(B) The SER has been revised to state that the maximum dose from the transfer cask for a loss of neutron shield accident is 25.3 mrem for a 24-hour period.

(C) The SER has been revised to state that the NRC staff's review is discussed in Section 7 of the SER.

(D) The SER has been revised to state that the 751 mrem dose was calculated for the bone.

B: Certificate of Compliance

Comment B–1: The commenter requested that within the Draft Certificate of Compliance, in 1.b, second paragraph, that the statement ''The ten unfueled guide tube positions are mechanically blocked to prevent loading in these positions'' be revised to read ''The ten unfueled cell locations are mechanically blocked to prevent loading in these positions.'' The commenter stated that this terminology agrees with that in the previous sentence, and reflects the fact that there are no guide tubes in the unfueled cell locations.

Response: The NRC agrees with the comment and the CoC has been revised to clarify the statement.

C: Technical Specifications

Comment C–1: The commenter requested that LCO 3.3.2 (Storage Cask Temperatures During Storage) for the W21 Canister be revised to modify REQUIRED ACTION B.2 to allow for the use of alternative means to be developed by the licensee to bring the CASK into compliance with the LCO. Alternatively, REQUIRED ACTION B.2 should be deleted and replaced with a requirement for the licensee to develop the means to meet the LCO and notify NRC of the action taken. The commenter's logic was that the specification of a specific method to meet the LCO when there are other alternatives available is overly restrictive and may not be feasible in some conditions. This will permit decommissioning facilities to meet the LCO in the absence of a spent fuel pool. In addition, the additional flexibility can better satisfy ALARA by mitigating the personnel exposure associated with the removal of spent fuel from the CANISTER.

Response: The NRC disagrees with the comment. Currently, no alternative means of complying with the LCO have been proposed by the licensee or evaluated by the staff for acceptability. Any alternative means to meet the LCO shall be approved by the staff prior to implementation.

Comment C–2: The commenter requested that LCO 3.3.3 (Storage Cask Temperatures During Horizontal Transfer) for the W21 Canister be revised to modify REQUIRED ACTION C.1 to allow for the use of alternative means to be developed by the licensee to bring the CASK into compliance with the LCO. Alternatively, REQUIRED ACTION C.1 should be deleted and replaced with a requirement for the licensee to develop the means to meet the LCO and notify NRC of the action taken. The commenter's logic was that the specification of a specific method to meet the LCO when there are other alternatives available is overly restrictive and may not be feasible in some conditions. This will permit decommissioning facilities to meet the LCO in the absence of a spent fuel pool. In addition, the additional flexibility can better satisfy ALARA by mitigating the personnel exposure associated with the removal of spent fuel from the CANISTER.

Response: The NRC disagrees with the comment. Currently, no alternative means of complying with the LCO have been proposed by the licensee or evaluated by the staff for acceptability. Any alternative means to meet the LCO shall be approved by the staff before implementation.

Comment C–3: The commenter requested that LCO 3.3.2 (Storage Cask Temperatures During Storage) for the W74 Canister be revised to modify REQUIRED ACTION B.2 to allow for the use of alternative means to be developed by the licensee to bring the CASK into compliance with the LCO. Alternatively, REQUIRED ACTION B.2 should be deleted and replaced with a requirement for the licensee to develop the means to meet the LCO and notify NRC of the action taken. The commenter's logic was that the specification of a specific method to meet the LCO when there are other alternatives available is overly restrictive and may not be feasible in some conditions. This will permit decommissioning facilities to meet the LCO in the absence of a spent fuel pool. In addition, the additional flexibility can better satisfy ALARA by mitigating the personnel exposure associated with the removal of spent fuel from the CANISTER.

Response: The NRC disagrees with the comment. Currently, no alternative means of complying with the LCO have been proposed by the licensee or evaluated by the staff for acceptability. Any alternative means to meet the LCO would be approved by the staff prior to implementation.

Comment C–4: The commenter requested that LCO 3.3.3 (Storage Cask Temperatures During Horizontal Transfer) for the W74 Canister be revised to modify REQUIRED ACTION C.1 to allow for the use of alternative means to be developed by the licensee to bring the cask into compliance with the LCO. Alternatively, REQUIRED ACTION C.1 should be deleted and replaced with a requirement for the licensee to develop the means to meet the LCO and notify NRC of the action taken. The commenter's logic was that the specification of a specific method to meet the LCO when there are other alternatives available is overly restrictive and may not be feasible in some conditions. This will permit decommissioning facilities to meet the LCO in the absence of a spent fuel pool. In addition, the additional flexibility can better satisfy ALARA by mitigating the personnel exposure associated with the removal of spent fuel from the CANISTER.

Response: The NRC disagrees with the comment. Currently, no alternative means of complying with the LCO have been proposed by the licensee or evaluated by the staff for acceptability. Any alternative means to meet the LCO shall be approved by the staff prior to implementation.

Comment C–5: The commenter requested that the Technical Specification for the FuelSolutions Storage System, Section 4.2.2.1 (Storage Cask), be revised to add a note clarifying the requirements for site-specific pad designs that have different values from

those listed. The following is requested to be added at the end of Section 4.2.2.1: ''Any site-specific pad design with parameters that differ from those listed must be evaluated by the licensee to confirm that the design basis deceleration loads for the storage cask and canister are not exceeded. This evaluation must be performed using the same methodology as described in WSNF–200 SAR Section 3.7.3.1.''

Response: The NRC agrees with the comment. The Technical Specification for the FuelSolutions Storage System, Section 4.2.2.1 (Storage Cask) has been revised accordingly.

Comment C–6: The commenter requested that the Technical Specification for the FuelSolutions Storage System, Section 4.2.2.2 (Transfer Cask), be revised to add a note clarifying the requirements for site-specific pad designs that have different values from those listed. The following is requested to be added at the end of Section 4.2.2.2: ''Any site-specific pad design with parameters that differ from those listed must be evaluated by the licensee to confirm that the design basis deceleration loads for the transfer cask and canister are not exceeded. This evaluation must be performed using the same methodology as described in WSNF–200 SAR Section 3.7.5.1.''

Response: The NRC agrees with the comment. The Technical Specification for the FuelSolutions Storage System, Section 4.2.2.2 (Transfer Cask) has been revised accordingly.

D: Safety Analysis Report

Comment D–1: The commenter requested that editorially, within the Safety Analysis Report in WSNF–200 SAR Table 12.1–1, the following references to the Technical Specifications be revised:

(a) Under Radiological Protection, 3.4.1 should be 5.3.5, and 3.6.1 should be 3.5.1.

(b) Under Structural Integrity, 3.5.1 should be 3.4.1.

Response: The NRC agrees with the comment. The editorial corrections were made to Table 12.1–1.

Summary of Final Revisions

Based on the responses above, the CoC, the TSs, the SAR, and the SER have been modified as follows:

1. The SER has been revised (Comments A–1 through and including A–6).

2. The CoC has been revised (Comment B–1).

3. The Technical Specification for the FuelSolutions Storage System, Section 4.2.2.1 (Storage Cask) has been revised. (Comment C–5).

4. The Technical Specification for the FuelSolutions Storage System, Section 4.2.2.2 (Transfer Cask) has been revised (Comment C–6).

5. Editorial corrections were made to Table 12.1–1 of the SAR (Comment D–1).

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the NRC on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, th NRC is adding the FuelSolutions cask system to the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852 and electronically at *http://ruleforum.llnl.gov.* Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail *spt@nrc.gov.*

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any part 50 nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under

a general license, and would be in conflict with Nuclear Waste Policy Act (NWPA) direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous NRC actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BNFL Fuel Solutions. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1026 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026.

SAR Submitted by: BFNL Fuel Solutions.

SAR Title: Final Safety Analysis Report for the FuelSolutions Spent Fuel Management System.

Docket Number: 72–1026.

Certificate Expiration Date: March 19, 2021.

Model Number: WSNF–200, WSNF–201, and WSNF–203 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters

* * * * *

Dated at Rockville, Maryland, this 22nd day of December 2000.

For the Nuclear Regulatory Commission.

John W. Craig,

Acting Executive Director for Operations.

[FR Doc. 01–1172 Filed 1–12–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–44–AD; Amendment 39–12071; AD 2001–01–01]

RIN 2120–AA64

Airworthiness Directives; BMW Rolls-Royce GmbH Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to BMW Rolls-Royce (RR) GmbH models BR700–710A1–10 and BR700–710A2–20 turbofan engines with oil filter differential pressure switch part number (P/N) 21SN04–419 or P/N 21SN04–431 installed. This action requires inspections of oil filter differential pressure switches, and replacement if necessary, in accordance with Rolls-Royce Service Bulletin No. SB–BR700–79–900215, Revision 2, dated August 2, 2000. This amendment is prompted by a report of severe engine oil loss, caused by oil leakage from a defective oil filter differential pressure switch. The actions specified in this AD are intended to prevent defective oil filter differential pressure switches from causing severe engine oil loss, resulting in in-flight shutdowns.

DATES: Effective January 31, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 2001.

Comments for inclusion in the Rules Docket must be received on or before March 19, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from BMW Rolls-Royce GmbH, Postfach 1246, 61402 Oberursel, Germany; telephone: International Access Code 011, Country Code 49, 33 7086–2935, fax: International Access Code 011, Country Code 49, 33 7086–3276. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7176, fax: 781–238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on BMW RR GmbH models BR700–710A1–10 and BR700–710A2–20 turbofan engines. The LBA received a report of severe engine oil loss, caused by oil leaking from a defective oil filter differential pressure switch, resulting in an in-flight engine shutdown. BMW RR has identified and provided in a list, serial numbers for pressure switches that are not defective. BMW RR has determined that for pressure switches with less than 200 flight hours-since-new, that are not one of the listed switches, and are not leaking, 50 flight hours will be allowed after the effective date of this AD before the required replacement with a serviceable switch. For pressure switches with 200 or more flight hours-since-new, 150 flight hours will be allowed after the effective date of this AD before the required replacement with a serviceable switch. This is based on calculations that pressure switches with 200 or more flight hours-since-new have successfully passed a threshold for failure. An analysis conducted by BMW RR revealed that the engine shutdown rate due to oil leaking from defective oil filter differential pressure switches is unacceptable, and could result in multiple engine in-flight shutdowns. The actions specified in this AD are intended to prevent defective oil filter differential pressure switches from causing severe engine oil loss, resulting in in-flight engine shutdowns.

Service Information

RR has issued Service Bulletin No. SB–BR700–79–900215, Revision 2, dated August 2, 2000, which specifies procedures for inspecting, marking, and if necessary replacing oil filter differential pressure switch P/N 21SN04–419 or P/N 21SN04–431 with a serviceable switch. The LBA issued AD No. 2000–257/2, in response to the service bulletin to assure the airworthiness of these engines in Germany.

Bilateral Airworthiness Agreement

These engine models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD is being issued to prevent defective oil filter differential pressure switch P/N 21SN04–419 or P/N 21SN04–431 from causing severe engine oil loss, resulting in in-flight shutdown. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–44–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This action does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–01–01 BMW Rolls-Royce GmbH: Amendment 39–12071. Docket 2000–NE–44–AD.

Applicability: This airworthiness directive (AD) applies to BMW Rolls-Royce (RR) GmbH models BR700–710A1–10 and BR700–710A2–20 turbofan engines with oil filter differential pressure switch part number (P/N) 21SN04–419 or P/N 21SN04–431 installed. These engines are installed on, but not limited to Bombardier Inc. BD–700 and Gulfstream Aerospace Corp. G–V series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done. To prevent defective oil filter differential pressure switches from causing severe engine oil loss, resulting in in-flight shutdowns, perform the following:

Number Checking, Marking, and Replacement

(a) Within 50 flight hours after the effective date of this AD, mark or replace the oil filter differential pressure switch as follows:

(1) If the oil filter differential pressure switch serial number is listed in Appendix 1 of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000, then mark the switch in accordance with the Accomplishment Instructions, Section 3, of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000. No further action is required.

(2) If the oil filter differential pressure switch serial number is not listed in Appendix 1 of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000, then replace the switch as follows:

(i) For oil pressure switches with less than 200 flight hours-since-new on the effective date of this AD, replace the pressure switch with a serviceable switch, within 50 flight hours after the effective date of this AD, in accordance with Accomplishment Instructions, Section 3, Part 2 of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000.

(ii) For oil pressure switches with 200 or more flight hours-since-new on the effective date of this AD, replace the pressure switch with a serviceable switch, within 150 flight hours after the effective date of this AD, in accordance with Accomplishment Instructions, Section 3, Part 2 of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000.

Definition of Serviceable Switch

(b) For the purpose of this AD, the definition of a serviceable switch is an oil filter differential pressure switch P/N 21SN04–419 or 21SN04–431 that has a manufacturer-applied orange stripe on the switch cap, or, a pressure switch whose serial number is listed in Appendix 1 of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000, and has been marked with orange paint in accordance with the Accomplishment Instructions, Section 3, of RR Service Bulletin SB–BR700–79–900215, Revision 2, dated August 2, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD must be performed in accordance with BMW RR Service Bulletin No. SB–BR700–79–900215, Revision 2, dated August 2, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BMW Rolls-Royce GmbH, Postfach 1246, 61402 Oberursel, Germany; telephone: International Access Code 011, Country Code 49, 33 7086–2935, fax: International Access Code 011, Country Code 49, 33 7086–3276. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(f) This amendment becomes effective on January 31, 2001.

Issued in Burlington, Massachusetts, on January 4, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–917 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

[Docket No. 00331092-0315-02; I.D. 030100F]

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and application period; correction.

SUMMARY: This document corrects the final rule for the License Limitation Program by adding an Office of Management and Budget (OMB) control number to § 902.1. The OMB control number was inadvertently omitted from the final rule implementing Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska.

DATES: Effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228.

SUPPLEMENTARY INFORMATION: The final rule for Fisheries of the Exclusive Economic Zone off Alaska; License Limitation Program for the Scallop Fishery (65 FR 78110, December 14, 2000) established permit requirements to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska. The permit requirements were approved by OMB but the control number was not added to § 902.1(b).

Correction

In rule FR Doc 00-31649, published on December 14, 2000 (65 FR 78110) make the following correction. On page 78115, in the third column, after the signature, add the following text:

For reasons set out in the preamble, 15 CFR part 902, is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 679.4(g) with a new OMB control number to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
679.4 (g)	–0420
* * * * *	

Dated: January 8, 2001.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–1214 Filed 1–12–01; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM01–3–000]

Annual Update of Filing Fees

January 9, 2001.

AGENCY: Federal Energy Regulatory Commission (DOE).

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Payroll Utilization Reporting System and the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 1999.

EFFECTIVE DATE: February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Troy Cole, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–66, Washington, DC 20426, 202–219–2970.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII, WordPerfect 6.1 and WordPerfect 8.0 format. User assistance is available at 202–208–2222 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 1999 costs. The adjusted fees announced in this notice are effective February 15, 2001. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of SBREFA. [5 U.S.C. § 804(2)] The Commission is submitting this final rule to both Houses of Congress and to the Comptroller General.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403): $7,840.

Fees Applicable to General Activities

1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a)): $15,760.

2. Review of a Department of Energy remedial order:

Amount in controversy

$0–9,999. (18 CFR 381.303(b)): $100.
$10,000–29,999. (18 CFR 381.303(b)): $600.
$30,000 or more. (18 CFR 381.303(a)): $23,010.

3. Review of a Department of Energy denial of adjustment:

Amount in controversy

$0–9,999. (18 CFR 381.304(b)): $100.
$10,000–29,999. (18 CFR 381.304(b)): $600.
$30,000 or more. (18 CFR 381.304(a)): $12,060.

4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)): $4,520.

Fees Applicable to Natural Gas Pipelines

1. Pipeline certificate applications pursuant to 18 CFR 284.22. (18 CFR 381.207(b)): $1,000.

Fees Applicable to Cogenerators and Small Power Producers

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)): $13,550.
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)): $15,340.
3. Applications for exempt wholesale generator status. (18 CFR 381.801): $1,310.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

2. In § 381.302, paragraph (a) is amended by removing ''$14,710'' and inserting ''$15,760'' in its place.

§ 381.303 [Amended]

3. In § 381.303, paragraph (a) is amended by removing ''$21,470'' and inserting ''$23,010'' in its place.

§ 381.304 [Amended]

4. In § 381.304, paragraph (a) is amended by removing ''$11,260'' and inserting ''$12,060'' in its place.

§ 381.305 [Amended]

5. In § 381.305, paragraph (a) is amended by removing ''$4,220'' and inserting ''$4,520'' in its place.

§ 381.403 [Amended]

6. Section 381.403 is amended by removing ''$7,320'' and inserting ''$7,840'' in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing ''$12,650'' and inserting ''$13,550'' in its place and by removing ''$14,320'' and inserting ''$15,340'' in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing ''$1,530'' and inserting ''$1,310'' in its place.

[FR Doc. 01–1149 Filed 1–12–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule revises and clarifies the procedures used by Indian tribes and individuals to request the Secretary of the Interior to acquire title to land into trust on their behalf. It describes the criteria that the Secretary will use in determining whether to exercise his or her authority to accept title to land to be held in trust for the benefit of Indian tribes and individuals. This rule also describes the procedure for mandatory acquisitions of title and establishes a process to address the difficulties encountered by Indian tribes which have no reservation, have no trust land or have trust land the character of which renders it incapable of being developed.

DATES: Effective February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Questions concerning this rule should be directed to: Terry Virden, Director, Office of Trust Responsibilities, Mail Stop: 4513–MIB, 1849 C Street NW., Washington, DC 20240; telephone: 202–208–5831; electronic mail: TerryVirden@BIA.GOV.

SUPPLEMENTARY INFORMATION: The regulation makes more clear the process that is followed by the Secretary in the exercise of this discretionary authority. The regulation also makes clear that we will follow a process which reflects (1) a presumption in favor of the acquisition of trust title when an application involves title to lands located inside the boundaries of a reservation (''on-reservation lands''), and (2) a more demanding standard for the acquisition of title when the application involves title to lands located outside the boundaries of a reservation (''off-reservation lands''). The delineation of these differing processes will better enable the Secretary to carry out the responsibility for assisting Indian tribes in re-establishing jurisdiction over land located within their own reservations. It also creates a framework that more adequately addresses concerns non-Indian governments may have about the potential ramifications of placing off-reservation lands into trust.

This regulation also describes the procedure for mandatory acquisitions of title. The general statutory authority giving the Secretary discretion to acquire title to lands in trust is found in section 5 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. 465. Occasionally, Congress enacts more narrow legislation granting the Secretary discretionary authority to acquire title to land into trust for some specific purpose. Acquisitions of trust title under the IRA and other more narrow statutes that grant discretionary authority to the Secretary are referred to as ''discretionary acquisitions'' of title. Mandatory acquisitions of title are those that Congress has directed the Secretary to complete by removing any discretion in the administrative decision making process. The processing of these mandated acquisitions has not always been well-understood. The rule identifies the types of acquisitions that we consider mandatory and defines the process by which we acquire the title.

Finally, this regulation establishes a process to address the unique difficulties encountered by Indian tribes which have no reservations, have no trust land or have trust land the character of which renders it incapable of being developed. The process enables such tribes to designate a ''Tribal Land Acquisition Area'' (TLAA) in which it plans to acquire land. The TLAA requires approval of the Secretary and, when approved, will enable the tribe to acquire title to the lands within the TLAA into trust under the on-reservation provision of this regulation for a prescribed period of time.

On April 12, 1999, the proposed rule for the acquisition of title to land in trust was published in the **Federal**

Register (Vol. 64, No. 69, pages 17574–17588). The initial deadline for receipt of comments was July 12, 1999, but extensions to the comment period were granted to allow additional time for comments on the proposed rule. The comment period expired on December 29, 1999. Comments were received from a wide variety of Indian tribes and individuals, tribal groups, local and state governments and other interested groups and individuals. The development of this final rule making was achieved through formal consultation on the record with affected tribal governments. A panel discussion meeting with federal, state and local governments, Indian tribes and various organizations was held in Washington, DC in May, 1999. Panel members included persons from California Indian Lands Office, attorneys representing various tribal and municipal clients, Minority Staff Director and Counsel of House Resources Committee for Indian Affairs, Majority Staff Director of Senate Committee on Indian Affairs, two tribal chairpersons, Deputy Attorney General of South Dakota and National Association of Convenience Stores. In addition, in accordance with the government-to-government relationship with Indian tribes, formal consultations were held throughout the United States during the comment period to explain and provide interested parties with an opportunity to understand and comment on the final rule. Five nationwide consultation meetings with Indian tribes and individuals were conducted during the comment period. These meetings were held in Albuquerque, New Mexico in May 1999; St. Paul, Minnesota in May 1999; Sacramento, California in June 1999; Mesa, Arizona in June 1999 and Portland, Oregon in August 1999. In total, comments were received from 342 Indian tribes, 335 individuals, 65 state and local governments, 9 congressional offices and 7 federal agencies. Tribal participation was also achieved by consultation with the National Congress of American Indians (NCAI) for its member tribes. NCAI established a working group to assist in the development of the comments on the proposed regulations.

This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs pursuant to Part 290, Chapter 8, of the Departmental Manual.

Summary of Regulations and Comments Received

The following narrative and discussion of comments is keyed to specific subparts of the rule.

Subpart A—Purpose, Definitions, General

Summary of Subpart

This subpart addresses the purpose and scope of the regulation and provides interpretation for the key terms of the regulation. Subpart A also addresses the types of transactions affecting this regulation, how to apply to have title to land placed in trust, how requests are processed, what occurs after a decision is made on a request, when title to land attains trust status and the taking of fractional interests of land into trust.

Comments

Comments were received regarding the implementation of the proposed regulation, with some comments requesting that the rule be withdrawn. The suggestion was not accepted because the Secretary must ensure that his authority over the acquisition of title to land into trust is implemented in an orderly and fair manner.

There were several comments concerning the definition of ''reservation.'' One suggestion was that term the ''reservation'' should be defined the same as the statutory term ''Indian country.'' Another suggestion was that the definition of ''reservation'' should remain the same as in the existing regulation. Other comments suggested that ''reservation'' include a provision for Pueblo grant lands, others suggested that it include hunting and fishing treaty areas. The comments were duly considered and accepted to clarify that Pueblo lands within the exterior boundaries of lands granted or confirmed to, or acquired by, the Pueblo as reported by the Pueblo Lands Board under section 2 of the Act of June 7, 1924, ch. 331, 43 Stat. 636, plus any other lands reserved, set aside, or held in trust by the United States for the use of the Pueblo or its members are reservation lands for purposes of this regulation. Also, the term ''reservation'' is clarified to include lands created by federal agreement, Secretarial proclamation or final judicial determination. Further, the term ''reservation'' is clarified to include lands established by Executive or Secretarial proclamation in the State of Oklahoma. These changes to the definition of reservation appear in § 151.2 of the rule.

There were many comments suggesting that lands contiguous to a reservation should be treated as on-reservation acquisitions. To define contiguous lands as on-reservation lands would enable applicants to use the less burdensome process which reflects a presumption in favor of the acquisition of trust title to on-reservation lands. The comments were considered but rejected and the rule remains as proposed that land(s) contiguous to reservation land will be treated as off-reservation acquisitions for purposes of this regulation, although because of their proximity to an existing reservation, the tribe will receive more favorable consideration than if the lands were more remote.

There were several comments regarding the type of acquisition transactions covered by the regulation. Comments suggested that only those acquisitions of title from fee simple to trust or restricted fee to trust or exchanges involving fee simple to trust should be governed by this regulation. The proposed rule included trust to trust, restricted fee to restricted fee, restricted fee to trust and land exchange acquisitions. The comments have been accepted and the rule is amended in § 151.3 to provide that the requirements of the rule only apply to conveyances from fee simple to trust, fee simple to restricted fee and land exchanges involving fee simple land. The rationale for excluding the other types of acquisitions from the regulation is that trust to trust and restricted fee to restricted fee, restricted fee to trust and land exchanges not involving fee land do not have an impact on the local governments because these lands are not already under their jurisdiction. We accepted the comments and have revised § 151.3(b) of the regulation to exclude these transfers.

There were comments suggesting that the final rule should establish special treatment for government-to-government trust transfers, because these lands already are exempt from local taxation and jurisdiction and because the federal transfer process involves similar criteria as the Part 151 process, and requiring another regulatory review would be duplicative and burdensome. These comments were accepted and § 151.3(b) has been amended to exempt federal agency transfers of title of land from one federal agency to the BIA or tribe.

There were numerous comments suggesting that a time frame should be established for issuance of a decision to accept title to land in trust. The comments were accepted and the rule amended to provide that the applicant will be notified when an application is

complete. Once an applicant is notified that their application is complete, the BIA will issue a decision on the request within 120 working days. Subsection (f) has been added to § 151.5 to reflect this change.

There were several comments seeking clarification regarding the treatment of applications that are pending when the regulation becomes final. The comments were considered and the regulation now provides a definition of ''Complete application'' in § 151.2. A new subsection (e) is added to § 151.5 that establishes the standard for a request to be considered a complete application. Applications that satisfy the definition of complete application at the time this rule becomes final, will be processed under the previous rule. If it is determined that an application is not complete at the time the rule becomes final, the application will be processed in accordance with the requirements of this rule.

There were several comments concerning the authority to take land into trust in Alaska. The preamble to the proposed rule addressed in some detail the question of whether to continue the bar in the existing regulations to the acquisition of trust title in land in Alaska (other than for the Metlakatla Indian Community or its members). See 64 FR 17577–78 (1999). As the discussion there indicated, the Department had earlier received, and invited public comment on (See 60 FR 1956(1995)), a petition by Native groups in Alaska which requested that the Department initiate a rulemaking to remove the prohibition in the regulations on taking Alaska land in trust. That discussion also noted that the Associate Solicitor for Indian Affairs had concluded, in a brief September 15, 1978 Opinion, that the Alaska Native Claims Settlement Act (ANSCA) precluded the Secretary from taking land into trust for Natives in Alaska (except for Metlakatla).

The Solicitor has considered the comments and legal arguments submitted by Alaska Native governments and groups and by the State of Alaska and two leaders of the Alaska State Legislature on whether the 1978 Opinion accurately states the law. The Solicitor has concluded that there is substantial doubt about the validity of the conclusion reached in the 1978 Opinion. Among other things, the Associate Solicitor found ''significant'' that in 1976 Congress repealed section 2 of the Indian Reorganization Act (IRA). That section had extended certain provisions of the IRA to Alaska, and had given the Secretary the authority to designate certain lands in Alaska as Indian reservations. See 43 U.S.C. 704(a), 90 Stat. 2743, repealing 49 Stat. 1250, 25 U.S.C. 496. The 1978 Opinion gave little weight to the fact that Congress has not repealed section 5 of the IRA, which is the generic authority by which the Secretary takes Indian land into trust, and which Congress expressly extended to Alaska in 1936. See 25 U.S.C. 473a. The failure of Congress to repeal that section, when it was repealing others affecting Indian status in Alaska, five years after Congress enacted the Alaska Native Claims Settlement Act, raises a serious question as to whether the authority to take land in trust in Alaska still exists. Accordingly, the Solicitor has signed a brief memorandum rescinding the 1978 Opinion.

At the same time, the position of the Department has long been, as a matter of law and policy, that Alaska Native lands ought not to be taken in trust. Therefore, the Department has determined that the prohibition in the existing regulations on taking Alaska lands into trust (other than Metlakatla) ought to remain in place for a period of three years during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition on taking Alaska lands into trust. If the Department determines that the prohibition on taking lands into trust in Alaska should be lifted, notice and comment will be provided.

Subpart B—Discretionary Acquisitions of Title On-Reservation

Summary of Subpart

This subpart describes the information that must be included in a request involving land located inside a reservation boundary or an approved TLAA. This subpart also establishes the criteria that will be used to evaluate requests for the acquisition of title to lands located inside the reservation or an approved TLAA. Further, this subpart defines the consent needed of the recognized governing body when an Indian tribe or individual acquires land inside another tribe's reservation or approved TLAA.

Comments

One comment suggested that the regulation require applicants to address potential impacts to local governments when the land being acquired is located on-reservation. The comment was rejected because state and local governments already are invited to submit comments on a proposed acquisition and may address such impacts in their comments. One comment suggested that the final rule clarify the distinction between on-reservation and off-reservation land. We believe the regulation already clearly defines the terms of ''reservation'' and ''TLAA'' which are used for on-reservation acquisitions. There were a few comments concerning appropriate land use of a proposed acquisition. Comments suggested that the rule should require clarification of anticipated future uses after acquisition in trust, describe how appropriate use will be enforced and propose strict criteria for future uses of the land. These comments were rejected because the IRA allows Indian tribes to manage and control their lands in accordance with tribal policy. Therefore, the regulation provides that anticipated future uses are those identified that are reasonably foreseeable and achievable. There were a few comments suggesting that the regulation should allow acquisitions for cultural, religious, or ceremonial uses. The proposed regulation continues the existing practice of accepting applications for the acquisition of title to lands in trust for these purposes. There were comments suggesting that the Secretary more thoroughly consider the impact on the state and local governments by the taking of title to land into trust, loss of tax revenue, and that he resolve jurisdictional issues and impact to municipal and local services prior to deciding to take land into trust. The regulation provides state and local governments with the opportunity to comment on potential impacts of the proposed acquisition, and the Secretary may fully consider the potential impacts prior to making a decision to take title to land into trust.

There were numerous comments suggesting that the final rule should require objective standards for the Secretary to use in making decisions to take on-reservation land into trust. The comments were accepted and the regulation has been amended to provide clearer standards to evaluate on-reservation requests. Section 151.10 is amended to provide that once an application is complete, we will accept title to land into trust on-reservation or inside a TLAA if the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection. We will deny applications to accept on-reservation lands in trust if the acquisition will result in severe negative impact to the environment or severe harm to the local government. Evidence of such harm must be clear

and demonstrable and supported in the record.

There were several comments suggesting that the rule should encourage tribes to make payments in lieu of taxes. These comments were rejected. While it is the Department's policy to encourage tribes to work with local communities, the decision to consider in lieu contributions to the local governments is a matter for the tribe, not the United States. A few comments suggested that applicants not be required to provide an explanation or reason for the need for the trust acquisition. The comments stating that no documentation need be submitted were rejected because the information is needed by the Secretary in order to make an informed and supportable decision. Under the final rule, there is a presumption in favor of accepting land into trust for on-reservation acquisitions but the Secretary still requires basic information in order to make his determination. One comment suggested that the regulation should include an economic analysis of the intended use of the property. The comment was rejected because the Secretary must consider many factors in the decision making process, and the decision as to the economics of the tribal use of land is for the tribe to resolve, not the Secretary.

Subpart C—Discretionary Acquisitions Off-Reservation

Summary of Subpart

This subpart describes the information that must be included in an off-reservation request, that is, involving land located outside a reservation or TLAA. This subpart also sets forth the criteria that will be used to evaluate an off-reservation request. Further, this subpart establishes exceptions to the prohibition for individual Indians acquiring land that is located outside an individual Indian's reservation.

Comments

One comment suggested that the Department should recognize the benefits of off-reservation acquisitions. We agree. The Department has always, and continues to recognize such benefits. There were comments suggesting that the notification requirement as well as the public comment period be expanded. We believe the regulation provides adequate notification and comment periods. There were several comments suggesting that the regulation limit off-reservation acquisitions in a number of ways, such as treating disputed lands as off-reservation, limiting off-reservation acquisitions to former tribal lands, not allowing off-reservation trust acquisitions, securing Congressional approval for off-reservation acquisitions and creating a presumption against trust status for off-reservation lands. We believe these approaches are inconsistent with the Secretary's responsibilities under existing laws and the IRA. Affected parties are given the opportunity to comment on these proposed off-reservation acquisitions and such comments are thoughtfully considered in the decision-making process. There were numerous comments suggesting that the final rule should require objective standards for the Secretary to use in making decisions to take off-reservation land into trust. The comments were accepted and § 151.14 has been amended to provide clear standards to evaluate off-reservation requests. Once an application is complete, we will accept title to land in trust outside a reservation or outside an approved TLAA only if the application shows that the acquisition is necessary to facilitate tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection and that meaningful benefits to the tribe outweigh any demonstrable harm to the local community. Furthermore, we will not accept title to land in trust outside a reservation or outside an approved TLAA if the acquisition would result in severe negative impacts to the environment or significant harm to the local community. Evidence of the harm must be clear and demonstrable and supported in the record.

Subpart D—Mandatory Acquisitions of Title

Summary of Subpart

This subpart describes the information that is required to process a mandatory transfer of title to trust and how the request will be processed. Further, this subpart provides for an appeal of a determination that an acquisition is mandatory.

Comments

One comment suggested that the Department should treat an acquisition as mandatory only if Congress has mandated the Secretary to accept title to specific tracts of land. This comment was rejected because the Department cannot administratively limit Congress' authority to direct the Department to accept land into trust, and there clearly have been situations in which Congress has directed the Secretary to acquire land into trust, but does not specify clearly the parcel or parcels of land to be acquired. There were a few comments suggesting that the Secretary should view lands acquired under certain specific statutes as mandatory acquisitions. These comments were rejected as each mandatory acquisition must be reviewed on a case-by-case basis. Several comments were received that suggested that the term ''mandatory'' acquisition should be broadened to include ''on-reservation'' acquisitions, permit mandatory acquisition for the first 150,000 acres of land and make mandatory the acquisition of title to land in approved TLAAs. These suggestions were rejected since only Congress has the authority to mandate an acquisition and the Secretary cannot mandate acquisitions through these regulations. Each determination of whether an acquisition is mandatory or not must be made on a case-by-case basis, based on specific statutory direction provided by Congress.

One comment suggests that applicants should be permitted to file an appeal of a determination on whether or not an acquisition is mandatory. The comment is accepted and section § 151.16 has been amended to reflect that denials or approvals of a determination that an acquisition is mandatory may be appealed under the provisions of part 2. One comment suggested that the appeal process outlined in 25 CFR part 900 be used. This comment was rejected as part 900 applies to contracts issued under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et. seq.,* and, thus, is inapplicable to the provisions of this rule.

There were a couple of comments suggesting that the Department of Justice title evidence standards should not apply to on-reservation gifts of lands, nor should the warranty deed requirement apply when tribes have purchased land through a quit claim deed and the title is accompanied by title insurance. These suggestions were rejected as the standards imposed by the Department of Justice must be met for the United States to acquire land into trust for a tribe or individual Indian.

Subpart E—Tribal Land Acquisition Areas

Summary of Subpart

The subpart defines a TLAA, describes the information that must be included in a request for approval of a TLAA, describes how the request will be processed, identifies the criteria that will be used to evaluate requests and describes how to apply to modify an approved TLAA. This subpart also

clarifies under what circumstances an Indian tribe can include in its TLAA land located inside another Indian tribe's reservation or TLAA. Further, this subpart establishes that an Indian tribe is not prohibited from acquiring land off-reservation if its request for a TLAA is denied. Lastly, this subpart clarifies that land acquired within an approved TLAA does not automatically attain reservation status.

Federal policy has for many decades viewed the existence of a tribal land base as integral to the cultural, political, and economic well-being of Indian tribes. Because of the overwhelming importance of a tribal land base, this rule facilitates acquisitions by landless Indian tribes. The process to address these situations is the use of a TLAA. Upon approval of a TLAA by the Secretary, tribes will be able to benefit from the on-reservation acquisition provisions to create a homeland, and strive for tribal self-determination and economic self-sufficiency.

Comments

Several comments suggested that the final rule should be expanded to include not just reservation-less tribes but also Indian tribes which do not have trust land or which have a trust land base of which is incapable of being developed to create a homeland and strive for tribal self-determination and economic self-sufficiency. The comments were accepted and the definition of a TLAA at § 151.17 is amended to include Indian tribes that have no trust land or have trust land the character of which renders it incapable of being developed to take advantage of the TLAA. A new § 151.18 was added to make more clear what tribes are eligible to apply for a TLAA. One comment suggested that existing tribal consolidation areas approved pursuant to the current acquisition regulation should be grand-fathered and treated as a TLAA while another comment suggested that the rule should clarify whether or not tribes with existing approved tribal consolidation areas must reapply under the final rule for a TLAA. While this final rule eliminates the ability of tribes to obtain tribal consolidation areas as provided under the existing regulation, this rule provides an alternative mechanism in the form of a TLAA. Tribal consolidation areas approved under the existing regulation will remain in force and effect for the purposes for which they were approved, but such tribal consolidation areas are not deemed to constitute a TLAA under these regulations. In the event a tribe wants to amend or modify an existing approved tribal consolidation area to include the provisions of a TLAA, the proposed amendment or modification must be reviewed under the requirements of approval for a TLAA under the final rule. One comment suggested that TLAA receive congressional approval. We believe that the Secretary has the authority, and indeed the responsibility to prescribe procedures to fulfill the purposes of the IRA.

There were comments expressing the views that tribes should not be required to submit documentation that was different from that required for discretionary acquisitions; information documenting the history of the tribe, and information about the tribe; such as taxes, revenues and services; or other information that was viewed as impractical, unwarranted, or imposes a financial burden or is not readily available. We believe the information required under the final rule is reasonable, necessary, relevant to the decision making process and not burdensome upon the applicant as it may be readily obtained from existing sources. Further, the information is consistent with the kinds of information requested by applicants seeking off-reservation acquisitions. One comment suggested that the rule should clarify the requirements for notifying other governmental entities. We believe the rule provides sufficient notice requirements. One comment suggested that the 50-mile radius for notice be re-evaluated. The comment was rejected because the defined radius is considered a reasonable area that could be impacted by a trust acquisition and will provide sufficient notice to others.

There were a few comments concerning the 10 year term for an approved TLAA. The comments suggested that 10 years was an insufficient amount of time to acquire lands within the TLAA due the requirements for completing and securing approval to an acquisition. The comments were accepted and § 151.17 is amended to provide for a 25-year term for a TLAA.

There were several comments concerning the establishment of criteria or standards for evaluating requests for the approval of a TLAA. We believe that the regulation provides clear criteria for the Secretary to use in determining whether to approve a tribe's request for a TLAA. The criteria used for approving a TLAA is separate and distinct from the criteria and standards used to evaluate an on-or off-reservation acquisition request. Once a TLAA is approved by the Secretary, the on-reservation criteria will be used to determine whether to accept the title to land in trust. One comment suggested that a formal appeal process should be established when a request for a TLAA is denied. Section 151.6(a) sets out the process for the appeal of a decision under this part. One comment suggested that tribal trust land should be equivalent to reservation status. The comment was rejected because it was not within the scope of this rule and is governed by principles of Indian law. One comment suggested that the rule should clearly define a streamlined process for modification of approved tribal consolidation areas. The comment was rejected because the final rule establishes the criteria for the TLAA and eliminates the process to obtain a tribal consolidation area. Approved tribal consolidation areas, however, may form the basis for the development of a TLAA.

Subpart F—False Statements, Record-Keeping, Information Collection

Summary of Subpart

This subpart describes the penalties for making false statements pertaining to a request. This subpart also describes the record keeping and reporting requirements under this part as well as the information collection requirements.

Comments

One comment received suggested that Indian tribes should not be penalized for making false statements and another comment suggested the penalty for false statements should also apply to non-Indians. The first comment was rejected, and the second deemed already addressed because the False Statements Accountability Act of 1996 (18 U.S.C. 1001) applies to all statements submitted in connection with a trust title acquisition whether such statements are made by the applicant or interested parties. Section 151.27 was amended to clarify who owns the records associated with this part and a new § 151.28 was added to clarify how records associated with this part will be preserved.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. This regulation has been written in a question and answer format, arranged in a manner to make it easier to follow, with technical language or jargon eliminated to make it is easier to understand.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not

subject to review by the Office of Management and Budget.

(a) The amendments to this rule basically conform to the policies and practices that currently guide the Department's decision making on land into trust applications. The rule does not have an annual effect of $100 million or more on the economy. It does not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule simply identifies a ''minimum standard'' of criteria and requirements to be considered in the exercise of the Secretary's discretion to place lands in trust for individual Indians and tribes.

Looking at the overall picture of how much land we have taken into trust historically, the annual number of requests to place lands in trust has been small. Based on the BIA's Annual Report of Indian Lands for 1996, only 35 States have Indian lands, four of which have fewer than 1,000 acres of Indian lands. The 1996 report indicated that there were 6,941 total applications (fee-to-trust; trust-to-trust; restricted-to-restricted; restricted-to-trust) involving 212,000 acres cumulatively, *i.e.,* the average amount of land involved in an application was only about 30 acres. Based on the annual caseload report for FY 1996, the total dollar amount Tribes and individual Indians paid for acquisitions of land in trust is $19,420,303.81. The trust-to-trust, restricted-fee-to-restricted fee, and restricted fee-to-trust land acquisitions do not impact local and state governments because these lands are not presently subject to state or local jurisdiction or taxation. Some States and local governments may have a decrease in revenues derived from taxes from the Secretary's determination to accept title to land in trust. However, the loss in annual revenues for State and local jurisdictions is only be a fraction of the value of the land involved. Moreover, some tribes may choose to offset this loss by making payments in lieu of taxes, or supplying services to the local communities. Finally, any losses or gains to State or local tax rolls would be spread over several states and many local governments. Thus, overall, the net changes in tax revenues due to this rule are minimal, and do not significantly affect State or local governments.

(b) This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. Actions taken by this rule affect tribal or individual Indian land titles. The Department of the Interior, Bureau of Indian Affairs is the only governmental agency that makes the determination whether to take land into trust.

(c) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule sets out the criteria and procedures the Secretary uses in determining whether to accept title of certain Indian lands to the United States, as trustee, for the benefit of an individual Indian or a tribe.

(d) OMB has determined that this rule does not raise novel legal or policy issues and is therefore not subject to review under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this regulation does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility analysis is not required. See our initial analysis above item 1(a) under Regulatory Planning and Review. The effect on small entities is minimal.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. See the initial analysis above, item 1(a) under Regulatory Planning and Review. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. An economic analysis is not required.

(b) Does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule only affect title to tribal or individual Indian owned lands.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Actions under this rule only affect title to tribal or individual Indian owned lands.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

(a) The rule does not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. Additional expenses may be incurred by the requesting tribe or individual Indian to provide information to the Secretary. Tribes or an individual Indian provide information in order to receive a benefit.

(b) This rule does not produce a federal mandate of a $100 million or greater in any year. The overall effect of this rule is likely not to be significant to the State, local, or tribal governments or the private sector.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because actions under this rule do not constitute a taking. Tribes or individual Indians are voluntarily transferring title to the United States for their own benefit.

Federalism (Executive Order 13123)

With respect to Executive Order 13123, the rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment. The local tax base may be affected. Actions in this rule apply only to a relatively small amount of land. Due to the loss of tax revenue, the relationship between the State and local governments with tribes and/or the Federal Government may be affected. However, the loss of revenue overall is likely to be minimal and the vast majority of the land to be acquired will likely be within the boundaries of reservations where there is already a measure of Indian sovereignty. Therefore, the effects are ''insignificant'' within the meaning of Executive Order 13123.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order. This rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplifies procedures, reduces burden, and is clearly written. These regulations do not preempt any statute. They do supersede the current land acquisition regulations and the current procedure for establishing Indian Land Consolidation Areas. They would not be retroactive with respect to any land already taken into trust, but would apply to applications that are determined not be complete at the time of final publication of this rule.

Paperwork Reduction Act

This regulation requires an information collection from ten or more

parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements in §§ 151.9, 151.12, 151.15, 151.19, and 151.28 under 44 U.S.C. 3501 *et seq.* were submitted to the Office of Management and Budget (OMB) for approval. We will publish a notice in the **Federal Register** when OMB approves this collection. This information is required from Indian tribes and individual Indians who wish to convey land into trust status.

Information is collected from Indian tribes and individuals to support their request to the Secretary to acquire title to land in trust for their benefit. The Secretary uses the information to evaluate the request and forms the basis of a decision to accept or deny a request for the taking of title to land in trust.

The total average annual burden hours for the collection of information for the above specified sections of the regulation is broken down as follows.

Citation 25 CFR 151	Information	Average number of hours	Average number per year	Annual burden hours
151.9 for on-reservation	Applicant must submit:	16	850	13,600
	(a) Copy of authority;			
	(b) Explanation of need;			
	(c) Explanation of ownership status (tribe);			
	(d) Explanation of ownership status (individual);			
	(e) Title evidence			
	(f) Documentation for NEPA—tribe and individual	40	120	4,800
	(f) Documentation for NEPA—tiering	20	200	4,000
151.12 for off-reservation acquisitions.	Applicant must submit:	56	150	8,400
	(a) Copy of authority;			
	(b) Explanation of need;			
	(c) Description of proposed use;			
	(d) Description of location of land;			
	(e) Description of effect on state & political subdivisions;			
	(f) Description of jurisdictional issues;			
	(g) Title evidence			
	(h) Documentation for NEPA—tribe provides documentation	40	150	6,000
151.15 for Mandatory acquisitions	Applicant must submit: (a) Copy of authority; (b) Title evidence; (c) Additional information upon request.	.5	69	35
151.19 for Tribal Land Acquisition Areas (TLAA).	Applicant must submit:	96	325	31,200
	(a) Copy of authority;			
	(b) Copy of tribal documents to establish TLAA;			
	(c) Summary of purposes and goals;			
	(d) Summary of tribe's history;			
	(e) Description of TLAA;			
	(f) Location of rights of way;			
	(g) Description of effect on state and political subdivisions;			
	(h) Description of jurisdictional and land use issues			

We invite the public to provide any comments concerning the accuracy of the burden estimate and any suggestions for reducing the burden. Submit comments to the Bureau of Indian Affairs, Director, Office of Trust Responsibilities, 1849 C Street, NW., MS–4513–MIB, Washington, DC 20240.

The collection of information is voluntary in order for an Indian tribe or individual to obtain a benefit, acquiring title to land in trust. None of the solicited information is confidential. However, if the applicant submits an application that contains financial information, it is covered by the Privacy Act.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because this rule is of an administrative, technical, and procedural nature.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, ''Consultation and Coordination with Indian Tribal Governments'' (FR Vol. 63, No. 96, Pages 27655–27657) and 512 DM 2, we evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this rule unless a tribe or an individual Indian voluntarily requests that the United States place land in trust for their benefit. Tribes were asked for comments prior to publication as a final regulation of this rule and their comments were considered prior to publication.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

Accordingly, the Bureau of Indian Affairs is revising 25 CFR part 151 to read as follows:

PART 151—ACQUISITION OF TITLE TO LAND IN TRUST

Subpart A—Purpose, Definitions, General

Sec.

Subpart B—Discretionary Acquisitions of Title On-Reservation

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended; 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 18 U.S.C. 1001; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 467, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

Subpart A—Purpose, Definitions, General

§ 151.1 What is the purpose of this part?

The purpose of this part is to describe the authorities, policies, and procedures that we use to decide whether to accept title to land in the name of the United States to be held in trust for the benefit of an individual Indian or a tribe.

§ 151.2 How are key terms defined in this part?

Alienation means a conveyance or transfer of title to property.

Bureau means the Bureau of Indian Affairs within the Department of the Interior.

Complete Application means an application that contains all the documentation, analysis and information required by § 151.5(f).

Discretionary acquisitions of title means those acquisitions of trust title which Congress has authorized, but not required us to accept administratively.

Encumbrance means a limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

Fee simple land means land held absolute and clear of any condition or restriction, and where the owner has unconditional power of disposition.

Governing tribe means the tribe having governmental jurisdiction over the land being acquired.

Individual Indian means a person who:

(1) Is a member of a federally recognized tribe; or

(2) Was physically residing on a federally recognized Indian reservation as of June 1, 1934, and is a descendant of an enrolled member of a federally recognized tribe; or

(3) Possesses a total of one-half degree or more Indian blood of a federally recognized tribe.

Land means real property or any title interest therein, as defined by the statute that authorizes the land acquisition.

Legislative transfer of title means the direct transfer of title to land into trust status for the benefit of an individual Indian or Indian tribe by Congress through legislation. The regulations in this part do not apply to legislative transfers of title.

Mandatory acceptance of title means a conveyance of trust title which Congress has required the Secretary to accept if certain specified conditions over which the Secretary has no control are met.

Reservation means, for purposes of this part, that area of land which has been set aside or which has been acknowledged as having been set aside by the United States for the use of the tribe, the exterior boundaries of which are more particularly defined in a final treaty, Federal agreement, Executive or secretarial order, Executive or secretarial proclamation, United States patent, Federal statute, or final judicial or administrative determination, provided that:

(1) In the State of Oklahoma, *reservation* means that area of land constituting the former reservation of the tribe. *Former reservation* means lands that are within the jurisdictional area of an Oklahoma Indian tribe and are within the boundaries of the last reservation established by final treaty, Federal agreement, Executive or secretarial order, Executive or secretarial proclamation, United States patent, Federal statute, or final judicial or administrative determination; and

(2) For Pueblo Indian tribes in the State of New Mexico, *reservation* means lands within the exterior boundaries of lands granted or confirmed to or acquired by the Pueblo as reported by the Pueblo Lands Board under section 2 of the Act of June 7, 1924, ch. 331, 43 Stat. 636, notwithstanding any finding of extinguishment of title, plus any other lands reserved, set aside, or held in trust by the United States for the use of the Pueblo or its members.

Restricted fee land means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Tribal Land Acquisition Area (TLAA) means an area of land approved by the Secretary and designated by a tribe that

(1) Does not have a reservation; or

(2) Does not have trust land; or

(3) Has a trust land base which is incapable of being developed in a manner that promotes tribal self-determination, economic development and Indian housing, and within which the tribe plans to acquire land over a specified period of time.

Tribe means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the

Bureau of Indian Affairs, and listed in the **Federal Register** under Public Law 103–454, act of Nov. 2, 1994 (108 Stat. 4791; 25 U.S.C. 479a (1994)).

Trust land means land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian or a tribe.

Undivided fractional interest means an interest of co-owners which is in the entire property, that is not divided out from the whole parcel. (Example: If you own 1/4 interest in 160 acres, you do not own 40 acres. You own 1/4 interest in the whole 160 acres because your 1/4 interest has not been divided out from the whole 160 acres.)

We/Us/Our means the Secretary of the Interior or an authorized representative.

§ 151.3 To what types of transactions does this part apply?

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all fee simple land-to-trust, fee simple land-to-restricted fee or land exchanges involving fee simple land.

(b) This part does not apply to the following transactions:

(1) Trust-to-trust;

(2) Restricted-fee to restricted-fee;

(3) Transfer of title to trust and restricted land through inheritance, devise or escheat;

(4) Legislative transfer of title into trust status; or

(5) Federal agency transfers of title.

(c) We will not accept title to land in trust in the State of Alaska, except for the Metlakatla Indian Community of the Annette Island reserve of Alaska or its members.

§ 151.4 How does an individual Indian or a tribe apply to have title to land conveyed to the United States in trust?

Individual Indians and tribes must send us a written request asking that we accept title and place the land into trust.

(a) The request must:

(1) Identify the applicant (including the applicant's tribal affiliation);

(2) Include the legal description of the land to be acquired; and

(3) Include all information which shows that the proposed acquisition meets the applicable requirements in this regulation.

(b) The request does not need to be in any special form. However, we strongly urge the applicant to address each section of this part that is relevant to the type of acquisition (*e.g.,* on- or off-reservation, discretionary or mandatory), in the order it appears here. Constructing the request in this way will enable us to review the request more efficiently.

(c) We may also ask for additional information to aid us in reaching a decision.

§ 151.5 How does BIA process the request?

(a) After we receive the request, we will notify the State, county, and municipal governments having regulatory jurisdiction over the land. We will send all notices under this section by certified mail, return receipt requested. The notice will contain the information described in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(1) If the request is for on-reservation lands or lands inside an approved TLAA, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) State the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 30 days from date of receipt of the notice on the proposed acquisition.

(2) If the request is for land outside a reservation and outside a TLAA, the notice we send under this section will:

(i) Include the name of the applicant;

(ii) Describe the lands proposed to be taken in trust;

(iii) Describe the proposed use of the land; and

(iv) Invite the State and local governments from the State in which the land is located to comment in writing within 60 days from the date of receipt of notice on the acquisition's potential effects on the State and local governments, including on their regulatory jurisdiction, real property taxes, and special assessments.

(b) After the comment period has ended, we will send to the applicant copies of any comments made by State and local governments on the applicant's request. We will give the applicant a reasonable time in which to reply to the comments.

(c) Subject to restrictions on disclosure required by the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905) the request will be available for review at the local BIA agency or area office having administrative jurisdiction over the land.

(d) We will consider all the documentation that the applicant submits.

(e) A complete application consists of the following:

(1) The applicant's request that the land be taken into trust, as follows:

(i) If the applicant is an Indian tribe, the written request must be a properly prepared and executed tribal resolution requesting trust status, or

(ii) If the applicant is an individual Indian, the written request must be a signed letter requesting trust status.

(2) Documentation that the applicant has addressed all the applicable information requirements in this section;

(3) A map depicting the location of the land to be acquired, and either:

(i) A legal description of the land, including a statement of the estate being acquired, *e.g.* all surface and mineral rights, surface rights only, surface rights and a portion of the mineral rights, etc., or

(ii) A survey if the land cannot be described by an aliquot legal description. The survey must be completed by a land surveyor registered in the State in which the land is located when the land being acquired is fee simple land,

(4) Hazardous level I survey,

(5) Environmental documentation,

(6) Title evidence,

(7) Impact notification letters, including all associated responses,

(8) Statement from the applicant that any existing rights of way, easements or encumbrances will not interfere with applicant's intended use of the land, and

(9) Any additional information we have requested, in writing, if warranted by the specific application.

(f) After BIA is in possession of a complete application, we will:

(1) Notify the applicant, in writing, that the application is complete,

(2) Issue a decision on an application within 120 working days after issuance of the notice of a complete application.

§ 151.6 How does BIA proceed after making a decision on a request?

(a) Within 120 days of our having a complete application package, we will send the applicant a certified letter describing our decision to accept or deny a request. We will also send a copy of the decision letter to everyone (including State and local governments) who sent us written comments on the request. The notice to interested parties will explain that they have a right to appeal our decision under part 2 of this title.

(b) If our decision is to deny the request, we will take no further action.

(c) If our decision is to approve the request, after the exhaustion of administrative remedies, we will:

(1) Complete a preliminary title examination. For both discretionary and

mandatory acquisitions, after we examine the title evidence, we will notify the applicant of any liens, encumbrances, or infirmities. If the liens, encumbrances, or infirmities make title to the land unmarketable, we will require the applicant to eliminate the liens, encumbrances, or infirmities before we act on the application.

(2) Publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area, a notice of the decision to take land into trust under this part. The notice will state that we have made a final decision to take land in trust and that we will accept title in the name of the United States no sooner than 30 days after the notice is published;

(3) Respond to any judicial appeals that may be filed; and

(4) After sufficient opportunity for judicial relief has been provided, accept trust title to the land by issuing or approving an appropriate instrument of conveyance. If we determine to accept trust title to land in a case before all judicial remedies have been exhausted, we will give the party/parties opposing the acquisition at least five days notice before we take any action.

§ 151.7 When does land attain trust status?

After the Secretary has published a notice of intent to take the land into trust pursuant to § 151.6(c)(2), the time period for appeal has run, and all title objections have been cleared, we will approve or issue the appropriate instrument of conveyance. Only after these steps have been completed will the land attain trust status. The approved deed will then be recorded in the county where located, title evidence will be updated, a final title opinion will be issued and the deed will be recorded in the appropriate Bureau of Indian Affairs Land Titles and Records Office under part 150 of this chapter.

§ 151.8 Will BIA accept and hold in trust an undivided fractional interest in land for an individual Indian or a tribe?

We will not accept and hold in trust for an individual Indian or a tribe an undivided fractional interest in land, except under one of the following conditions:

(a) The individual Indian or tribe already owns an undivided fractional restricted or trust interest in the land, and is acquiring the additional interest(s) to consolidate ownership.

(b) The individual Indian or tribe acquires the undivided fractional interest as the result of a gift under § 152.25(d) of this chapter and the conveyance does not result in further fractionation of interest in the land.

(c) The individual Indian or tribe is acquiring fee simple interest and there are existing undivided fractional trust or restricted interests in the same land.

(d) The individual Indian or tribe offers and agrees to purchase the remaining undivided fractional trust or restricted interest in the land, at not less than fair market value.

(e) A specific statute grants the individual Indian or tribe the right to purchase an undivided fractional interest in trust or restricted land without offering to purchase all interests.

(f) The owner(s) of a majority of the interests of the remaining undivided trust or restricted fractional interest agree in writing that the individual Indian or tribe may acquire the interest.

(g) A tribe acquires an undivided fractional interest in trust or restricted land under the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.*, under one of the following conditions:

(1) The land is inside the tribe's reservation, or inside an approved Tribal Land Consolidation Area, or is otherwise subject to the tribe's jurisdiction, and

(2) The tribe acquires the land:

(i) At not less than the fair market value; and

(ii) With the written consent of a majority of the owners of the remaining undivided fractional trust or restricted interest of this land;

(h) The tribe acquires, at not less than the fair market value, part or all of the undivided fractional interests in a parcel of trust or restricted land within the tribe's reservation, or subject to the tribe's jurisdiction and:

(1) Over 50 percent of the owners of the undivided fractional interests consent in writing to the acquisition; or

(2) An individual Indian makes an offer under paragraph (e) of this section;

(i) An individual Indian:

(1) Already owns an undivided fractional interest in the land;

(2) Offers to match a tribal offer to purchase under paragraph (d) of this section; and

(3) Has used and possessed the land for at least 3 years preceding the tribe's offer to purchase.

Subpart Part B—Discretionary Acquisitions of Title On-Reservation

§ 151.9 What information must be provided in a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land inside a reservation boundary or to land inside an approved TLAA must include:

(a) A complete description, or a copy, of the federal statute that authorizes the United States to accept the land in trust and any limitations contained in the authority.

(b) An explanation of why the individual Indian or tribe needs land to be in trust and how the land will be used.

(c) If the applicant is a tribe, an explanation of whether the tribe:

(1) Already owns an undivided fractional trust or restricted interest in the land; and

(2) Maintains jurisdiction over the land.

(d) If the applicant is an individual Indian, an explanation of:

(1) Whether the applicant already owns an undivided fractional trust or restricted interest in the land;

(2) The amount of land that the applicant already owns and the status of the land (fee, restricted, or trust); and

(3) Whether the applicant needs assistance in handling real estate affairs. For example, tell us if the applicant is a minor or has been declared legally incompetent.

(e) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice. Copies of the standards are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004.

(f) Documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, write to the Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 4513–MIB, Washington, DC 20240). Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

§ 151.10 What criteria will BIA use to evaluate a request involving land inside a reservation or inside an approved Tribal Land Acquisition Area?

Upon receipt of the information required under § 151.9 and upon a determination that the application is complete:

(a) We will approve the application and accept title to land in trust inside a reservation or inside an approved TLAA if we determine that the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resources protection; except that

(b) Notwithstanding a determination in paragraph (a) of this section, we may not approve the application and accept transfer of title into trust for land inside a reservation or inside an approved TLAA if the approval of the acquisition will result in severe negative impact to the environment or severe harm to the local government. Evidence of such harm must be clear and demonstrable and supported in the record.

§ 151.11 Can an individual Indian or a tribe acquire land inside a reservation or inside an approved Tribal Land Acquisition Area of another tribe?

An individual Indian or a tribe, including individual Indians and tribes in Oklahoma, may acquire land in trust on another tribe's reservation, or inside another tribe's approved TLAA, if the recognized tribe's governing body consents in writing. No consent is required if:

(a) An individual Indian or tribe already owns an undivided fractional trust or restricted interest in the parcel of land to be acquired; or

(b) The proposed acquisition is inside a reservation or an approved TLAA that is shared by two or more tribes, and the acquisition is for one of these tribes, or one of these tribes' members.

Subpart C—Discretionary Acquisitions of Title Off-Reservation

§ 151.12 What information must be provided in a request involving land outside a reservation or outside a Tribal Land Acquisition Area?

A request from an individual Indian or a tribe asking that the United States accept title to land outside a reservation boundary and outside an approved TLAA, must include:

(a) A complete description, or a copy of, the statutory authority that authorizes the United States to accept land in trust and any limitations contained in the authority;

(b) An explanation of the need of the individual Indian or tribe for land in trust and how the land will be used. This explanation is a crucial factor in determining if the request should be approved. The request must explain:

(1) Why the present land base is not appropriate or adequate for the activity contemplated in the request;

(2) Why the applicant needs the land to be in trust for the proposed use; and

(3) How trust status will benefit the applicant's economic and/or social conditions.

(c) A description of how the applicant will use the land. This description must include an explanation of:

(1) The past uses of the land;

(2) The present use of the land;

(3) The anticipated future uses of the land;

(4) The cultural or historical interest in the land;

(5) The objectives that the individual Indian or tribe hopes to attain; and

(6) If the acquisition is for housing:

(i) The projected number of units to be built; and

(ii) The number of members who will benefit.

(7) If the applicant is acquiring the land for business purposes, the tribe must provide a business plan that specifies the anticipated economic benefits of the proposed use.

(d) As complete a description as is possible of the following:

(1) The location of the land relative to State boundaries;

(2) The distance of the land from the boundaries of the tribe's reservation;

(3) The distance of the land from the Bureau's nearest agency or area office;

(4) The location of roads and rights-of-way that provide access to the land; and

(5) The location of land in relation to the tribe's other trust lands.

(e) A description of the effect on the State and its political subdivisions of removing the land from tax rolls. Describe any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local government(s);

(2) The amount of annual revenue lost from special assessments to the local government(s), if any;

(3) The amount of annual revenue lost from mineral receipts to the local government(s), if any; and

(4) The local government's ability to provide public safety services for the land.

(f) A description of any jurisdictional and land use infrastructure issues that might arise. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Any tribal zoning ordinances.

(2) Law enforcement and cross-deputizing, including:

(i) Who currently provides law enforcement services for the land;

(ii) If the applicant is a tribe, whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Any additional resources required to provide adequate law enforcement and how they will be funded.

(3) Safety factors, including:

(i) Who supplies fire protection service for the land;

(ii) Who supplies emergency medical service for the land; and

(iii) Whether the land is in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of existing access to the land;

(ii) Description and quantification of increased traffic in the area anticipated from the proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The land is served by a city sewage system;

(ii) The land is served by an some other type of sewage system that is adequate to meet applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for the land;

(iv) The city or another facility supplies services to the land;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the applicant tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to the land; and

(ii) The source of heating for any structures located on or to be located on the land, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there are any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the applicant has made any provisions to compensate the State or local governments for revenue lost because of the removal of the land from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

(g) Whether there is title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U.S. Department of Justice. The evidence will be examined to determine if the

applicant has marketable title. Copies of the standards are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004.

(h) The documentation that we need to comply with 516 DM 6, Appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies of these directives, write to the Department of Interior, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 4513–MIB, Washington, DC 20240). Include a record of consultation with appropriate authorities regarding environmental, endangered species, water quality, fish and wildlife, wetlands, transportation, air quality, cultural, historical value, hazardous waste, and toxic material issues.

(i) If the request is for an individual Indian, documentation demonstrating that the applicant's request meets one of the criteria described in § 151.13.

§ 151.13 Can an individual Indian acquire land outside his or her own reservation?

Except as provided in paragraphs (a) and (b) of this section, we will not accept title to land in trust outside an individual Indian's reservation. We may approve acquisitions of land outside an individual Indian's reservation if:

(a) The individual Indian already owns an undivided fractional trust or restricted interest in the property being acquired; or

(b) The individual Indian has sold trust or restricted interest in land and the money received from the sale is reinvested in other land selected and purchased with these funds, or the individual Indian is purchasing land with funds obtained as a result of a sale of trust or restricted land under 25 U.S.C. 409a.

§ 151.14 What criteria will BIA use to evaluate a request involving land outside a reservation or outside an approved Tribal Land Acquisition Area?

Upon receipt of the information required under § 151.12 and upon a determination that the application is complete:

(a) We will approve the application to accept land into trust outside a reservation or outside an approved TLAA only if the application shows that the acquisition is necessary to:

(1) Facilitate tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection; and

(2) We determine that the acquisition provides meaningful benefits to the Tribe that outweigh any demonstrable harm to the local community.

(b) Notwithstanding a determination in paragraph (a) of this section that the acquisition is necessary to facilitate tribal self-determination and that the benefits of the acquisition to the tribe outweigh any harm to the local community, we may disapprove an application to accept land into trust outside a reservation or outside an approved TLAA if the acquisition will result in:

(1) Severe negative impacts to the environment, or

(2) Significant harm to the local community. Evidence of such harm must be clear and demonstrable and supported in the application record; or

(3) The inability of the Bureau of Indian Affairs to adequately handle the additional law enforcement and other responsibilities that would result from the acquisition of the land into trust status.

(c) When making a determination under paragraph (a) or (b) of this section to approve or deny an application, we will consider the location of the land relative to the state boundaries, and its distance from the boundaries of the tribe's reservation and whether that distance is reasonable based on the following:

(1) If the land is in a different state than the tribe's reservation, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(2) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny

(3) As the distance between the tribe's reservation or approved TLAA and the land to be acquired increases, the concerns raised by the state and local governments will be given greater weight.

Subpart D—Mandatory Acceptance of Title

§ 151.15 What information must be provided in a request to process a mandatory transfer of title into trust status, and how will BIA process the request?

(a) To help us determine whether we are mandated by legislation to accept trust title to a specific tract of land, we require submission of the following documentation:

(1) A complete description, or a copy of, the statutory authority that directs the Secretary to place the land in trust, and any limitations contained in that authority;

(2) Title insurance or an abstract of title that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,* issued by the U. S. Department of Justice (copies are available from the U.S. Department of Justice, Environmental and Natural Resources Division, Land Acquisition Section, Room 6136, 601 Pennsylvania Avenue NW., Washington, DC 20004); and

(3) Any additional information that we may request.

(b) If we determine that the transfer of title into trust status is mandatory, we will publish that determination along with a notice of intent to take the land in trust in the **Federal Register** or in a newspaper of general circulation serving the affected area.

§ 151.16 Can our determination that a transfer of title into trust status is mandatory be appealed?

The Department's determination that a transfer of title into trust status is or is not mandatory may be appealed according to requirements set forth in part 2 of this title.

Subpart E—Tribal Land Acquisition Areas

§ 151.17 What is a Tribal Land Acquisition Area?

A TLAA is an area of land approved by the Secretary and designated by a tribe within which the tribe plans to acquire land over a 25-year period of time. If the Secretary approves the TLAA under this part, the tribe can acquire parcels of land within the TLAA during that 25-year period under the on-reservation provisions of this part.

§ 151.18 What tribes are eligible to apply for approval of a Tribal Land Acquisition Area?

Tribes which may apply for approval of a TLAA are those tribes which:

(a) Do not have a reservation,

(b) Do not have trust land, or

(c) Have a trust land base which is incapable of being developed in a manner that promotes tribal self-determination, economic development and/or Indian housing.

§ 151.19 What must be included in a request for Secretarial approval of a Tribal Land Acquisition Area?

A request for Secretarial approval of a TLAA must be made in writing, although we do not require that it take any special form. However, we strongly urge the applicant to address each applicable section of this part in the order it appears here. Constructing the

application in this way will help us review the request more efficiently. To be complete, a request for Secretarial approval of a TLAA must identify the applicant tribe, and must include:

(a) A complete description, or a copy, of the federal statute(s) that authorize the Secretary to accept land in trust on behalf of the tribe, and any limitations contained in that authority.

(b) Copies of tribal documents relating to the establishment of the TLAA and the acquisition of land within it, including:

(1) A copy of the tribe's constitution and by-laws, corporate charter, resolution, or excerpts from those documents that identify and grant tribal officials the authority to acquire tribal lands on behalf of the tribe;

(2) A copy of a tribal resolution designating the TLAA, including a legal description of the lands located within it; and (3)

(3) A copy of a tribal resolution requesting that the Secretary approve the proposed TLAA.

(c) A narrative summary that describes the purposes and goals for acquiring lands in trust within the TLAA, including general information about whether the lands are to be used for residential, governmental, educational, economic development, or other purposes.

(d) A narrative of the tribe's history that explains:

(1) When the tribe was federally recognized, and whether it was through legislation, treaty, or the Bureau of Indian Affairs' Federal Acknowledgment Process; and

(2) If applicable, how the tribe became dispossessed of its former reservation lands.

(e) A description of the TLAA, including:

(1) A legal description of the lands within the TLAA;

(2) Information about whether the lands are within the tribe's former reservation or aboriginal homelands;

(3) Information about whether the lands are Federal lands, State lands, or private lands;

(4) Information about whether the lands overlap with another tribe's jurisdictional area;

(5) Information about the significance of the land to the tribe, including whether the land has any particular historical, cultural, religious, or other value to the tribe; and

(6) Information about the distance of the TLAA from the Bureau's nearest agency or area office.

(f) A description of the location of roads and rights-of-way, or of additional rights-of-way that may be needed to provide access to lands located within the TLAA.

(g) A description of the reasonably anticipated overall effect on the State and its political subdivisions of removing lands located within the TLAA from tax rolls, and a description of any measures the applicant will take to reduce these effects. The description of effects must include an explanation of:

(1) The amount of annual taxes currently assessed by the local governments for lands located within the TLAA;

(2) The amount of annual revenue which would be lost from special assessments to the local governments, if any;

(3) The amount of annual revenue lost from mineral receipts to the local governments, if any; and

(4) The local governments' ability to provide public safety services for lands located within the TLAA.

(h) A description of any overall jurisdictional and land use infrastructure issues that might arise if the lands within the TLAA is taken into trust. The description must address each of the following issues.

(1) Zoning, including:

(i) The current zoning of the land;

(ii) Any proposed use conflicts with current zoning; and

(iii) Applicable tribal zoning ordinances.

(2) Law enforcement and cross-deputizing, including:

(i) Who currently provides law enforcement services for the land;

(ii) Whether the tribe already has its own law enforcement;

(iii) Who will supply law enforcement if the land is approved for trust status; and

(iv) Whether additional resources would be needed to provide adequate law enforcement.

(3) Safety factors, including:

(i) Who supplies fire protection service for lands located within the TLAA;

(ii) Who supplies emergency medical service for lands located within the TLAA; and

(iii) Information about whether lands located within the TLAA are in a flood area or flood control area.

(4) Traffic, roads, and streets, including:

(i) A description of current access to the land;

(ii) Describes and quantifies anticipated increased traffic in the area from proposed use; and

(iii) A description of whether existing roads and streets are adequate to handle any anticipated increase in traffic caused by the proposed use.

(5) Sanitation, including whether:

(i) The lands located within the TLAA are on a city sewage system;

(ii) The lands located within the TLAA are served by an adequate sewage system that meets applicable standards;

(iii) Trash pickup service or another method of trash disposal is available for lands located within the TLAA;

(iv) The city or another facility supplies sanitation services to the lands located within the Tribe Land Acquisition Area;

(v) There is an adequate water supply for the proposed use and any future anticipated uses; and

(vi) Whether the tribe has water rights to the available water supply.

(6) Utilities, including:

(i) Whether a city or a rural electric company supplies electricity to lands located within the TLAA; and

(ii) The source of heating for lands located within the TLAA, such as: natural gas, propane, oil, coal, wood, electric, or solar.

(7) Whether there exist any cooperative agreements or voluntary actions intended to address jurisdictional and land use conflicts.

(8) Whether the tribe has made any provisions to compensate the State and local governments for revenue lost because of the removal of the lands from the tax rolls. (Include any increases in Title IX funding from the Indian Education Act or Impact Aid funding.)

§ 151.20 How is a tribal request for Secretarial approval processed?

When we receive a request for Secretarial approval of a TLAA, we will review the supporting documentation to determine if the request meets the requirements of this part. If the request is complete, we will:

(a) Provide notice of the request for Secretarial approval to the Governor's Office, to appropriate local government officials, and to appropriate officials of tribes located within a 50-mile radius of the boundaries of the proposed TLAA. Recipients of the notice will be provided 60 days from the date of receipt in which to comment on the proposed TLAA and the request supporting it. Other interested parties may also submit comments during the 60-day consultation period.

(b) After the close of the comment period, based on the criteria described in § 151.21, we will decide whether to approve the TLAA. Our decision on whether to approve the TLAA will be communicated in the form of a certified letter to the applicant. We also will provide notice of our decision to interested parties by sending a copy of the decision letter to everyone

(including State and local governments) who sent us written comments on the request for approval.

(c) If we decide not to approve the TLAA, we will take no further action.

(d) If we decide to approve the TLAA, we will:

(1) Publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area, a notice of the decision to approve the TLAA; and

(2) Thereafter, for a period of 25 years, review requests to accept trust title land located within the TLAA as ''on-reservation'' acquisitions under the applicable on-reservation provisions in this part.

§ 151. 21 What criteria will BIA use to decide whether to approve a proposed Tribal Land Acquisition Area?

In general, because tribes without reservations are significantly disadvantaged, both in terms of cultural preservation and in terms of being ineligible for federal land-based programmatic funding and technical assistance, there is a presumption in favor of the tribe's need for at least some trust land. However, in determining whether to approve establishment of a TLAA, we will consider the individual circumstances of each applicant tribe, surrounding community, and affected land base. There are some standard criteria which will help direct our decision-making process. These standard criteria include:

(a) The request must be complete and contain all supporting documents;

(b) The statutory basis upon which the tribe proposes creation of the TLAA. If the tribe is the subject of a statute directing the Secretary to take some unspecified land into trust for the tribe's benefit, the tribe will enjoy a greater presumption in favor of approval of its proposed TLAA. (For example, there is statutory language such as ''the Secretary shall take land into trust within the tribe's service area,'' or ''the Secretary shall take land into trust within X and Y counties.'')

(c) The size of the proposed TLAA in relation to the size of the tribe's membership: we will look for a reasonable connection between the amount of land the tribe wishes to take into trust, and the basic trust needs (housing, health, employment opportunities) of the tribe's membership.

(d) The relationship of the tribe to the lands located within the TLAA: we will give greater weight to a request for approval of a TLAA that encompasses lands to which the tribe has established a strong cultural, historical, and/or legal connection.

(e) The ability of the tribe and the local non-Indian community to adjust to the jurisdictional changes that will occur if the lands within the TLAA are taken into trust, including:

(1) That there are adequate arrangements for provision of police and fire protection and other emergency response for persons living within the TLAA (whether living on trust or non-trust property);

(2) That there are adequate arrangements for provision of other municipal-type services, such as garbage removal, water, sewage;

(3) That adverse impacts on local governments and communities are reasonable compared to the benefits flowing to the applicant.

§ 151.22 Can a tribe include in its Tribal Land Acquisition Area land inside another tribe's reservation or Tribal Land Acquisition Area?

A tribe may include land inside the reservation boundaries or within an approved TLAA of another tribe, if:

(a) The tribe's governing body consents in writing;

(b) The tribe already owns undivided fractional trust or restricted interests in the tracts of land identified in its TLAA; or

(c) The tracts of land to be included in the TLAA are inside a reservation or an approved TLAA that is shared by two or more tribes, and the plan is for one of these tribes.

§ 151.23 If a Tribal Land Acquisition Area is not approved, is the tribe prohibited from acquiring land within it?

No. However, the tribe will have to apply to have individual parcels taken into trust under the off-reservation provisions of this part.

§ 151.24 If a Tribal Land Acquisition Area is approved, does the land taken into trust within it attain reservation status?

No. Lands taken into trust within a TLAA will enjoy ''Indian country'' status as that term has been defined in relevant federal statutes and case law. However, those lands do not attain ''reservation'' status by virtue of the TLAA having been approved by the Secretary. Reservation status can only be attained if:

(a) The tribe has applied to the Secretary under 25 U.S.C. 467; or

(b) There is a federal statute specifically designating the land as a reservation.

§ 151.25 Can a Tribal Land Acquisition Area be modified after approval?

Yes. However, the changes must be submitted with a request for approval in compliance with the criteria in this part and must be approved by the Secretary.

Subpart F—False Statements, Recordkeeping, Information Collection

§ 151.26 What is the penalty for making false statements in connection with a request that BIA place land into trust?

Anyone who knowingly and willfully makes a false statement in connection with a trust title acquisition request may be subject to criminal prosecution under the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

§ 151.27 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 151.28 How must a record associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 151.26(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31, and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 151.26(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

Dated: December 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–470 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–00–055]

Drawbridge Operation Regulations; Great Egg Harbor Bay, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 9/Beesleys Point Bridge across Great Egg Harbor Bay, mile 3.5, between Somers Point and Beesleys Point, in New Jersey. Beginning at 7 a.m. on January 22, 2001, through 5 p.m. on March 22, 2001, the bridge may remain in the closed position. This closure is necessary to conduct the installation of a new deck.

DATES: This deviation is effective from 7 a.m. on January 22, 2001, until 5 p.m. on March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard received a letter by fax from the contractor on December 1, 2000, requesting a temporary deviation from the current operating schedule of the Route 9/Beesleys Point Bridge. The draw currently is required to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5. The contractor intends to install a new deck on the bascule span of the bridge. To facilitate the installation, the bascule span will be bolted down in the closed position so that the old deck can be removed and a new deck installed. This work requires completely immobilizing the operation of the bascule span. In the event of an emergency, openings of the span will be provided as quickly as possible, but may take up to 48 hours to accomplish. Requests for emergency openings can be made by calling the bridge manager at (609) 390–3190 or (609) 624–0949.

In accordance with 33 CFR 117.35, the District Commander approved the contractor's request for a temporary deviation from the governing regulations in a letter dated December 12, 2000.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The temporary deviation allows the Route 9/Beesleys Point Bridge across Great Egg Harbor, mile 3.5, between Somers Point and Beesleys Point, New Jersey to remain closed from 7 a.m. on January 22, 2001, until 5 p.m. on March 22, 2001.

Dated: December 21, 2000.

John E. Skhor,

U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–1212 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 141, and 143

[FRL–6918–2]

RIN 2040–AD59

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is approving the use of updated versions of test procedures (i.e., analytical methods) for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. These updated versions of analytical methods have been published by one or more of the following organizations: American Society for Testing Materials (ASTM), United States Geological Survey (USGS), United States Department of Energy (DOE), American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF). Previously approved versions of the methods remain approved. Today's action will give the analytical community a larger selection of analytical methods. Today's action also corrects typographical errors and updates references where appropriate.

DATES: This final rule is effective on May 16, 2001 without further notice, unless EPA receives adverse comment by March 19, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule (or distinct amendments, paragraphs, or sections of this rule) will not take effect.

The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of May 16, 2001.

For judicial review purposes, this final rule is promulgated as of 1:00 p.m. (Eastern time) on January 30, 2001 as provided in 40 CFR 23.2 and 23.7.

ADDRESSES: You may submit written comments either by mail or electronically. Send comments to the Methods Update Comment Clerk (W–99–21), U.S. Environmental Protection Agency, Water Docket, MC–4101, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Submit electronic comments to *OW-Docket @epa.gov.* Please submit copies of any references cited in your comments. EPA would appreciate an original and 3 copies of your comments and enclosures (including references).

This **Federal Register** document is also available on the Internet at: *http://www.epa.gov/fedrgstr.* The record for this rulemaking has been established under docket number W–99–21. Supporting documents (including references and methods cited in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, East Tower Basement, Room EB57, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 202/260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Daylight Standard Time for an appointment.

Copies of final methods published by ASTM are available for a nominal cost through American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of final methods published by USGS are available for a nominal cost through the United States Geological Survey, U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225–0425. Copies of final methods published by DOE are available for a nominal cost through the Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, NY 10014–3621. Copies of Standard Methods are available for a nominal cost from the American Public Health Association,

1015 Fifteenth Street, NW., Washington, DC. 20005.

FOR FURTHER INFORMATION CONTACT: For information regarding wastewater methods contact Dr. Maria Gomez-Taylor, Engineering and Analysis Division (4303), USEPA Office of Science and Technology, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460 (e-mail: *Gomez-Taylor.Maria@epa.gov*). For information regarding the drinking water methods, contact Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (e-mail: *Reding.Richard@epa.gov*).

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

A. Clean Water Act

EPA Regions, as well as States, Territories, and Tribes, are authorized to implement the National Pollutant Discharge Elimination System (NPDES) program and issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' (*i.e.,* promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking, because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories, and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees
Industry	Industrial NPDES permittees
Municipalities	Publicly-owned treatment works with NPDES permits

B. Safe Drinking Water Act

Public water systems are the regulated entities required to conduct analyses to measure for contaminants in water samples. However, EPA Regions, as well as States, local, and tribal governments with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples. If EPA has established a maximum contaminant level (''MCL'') for a given drinking water contaminant, the Agency also ''approves'' (*i.e.,* promulgates through rulemaking) standardized testing procedures for analysis of the contaminant. Once EPA standardizes such test procedures, analysis using those procedures (or approved alternate test procedures) is required. Public water systems required to test water samples must use one of the approved standardized test procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities	SIC
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local, and tribal governments that themselves operate public water systems required to conduct analytic monitoring.	9511
Industry	Industrial operators of public water systems	4941
Municipalities	Municipal operators of public water systems	9511

C. These tables are not intended to be exhaustive, but rather provide a guide for readers regarding entities potentially regulated by this action. The tables list the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the tables could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system) and 40 CFR 136.1 (NPDES permits and CWA). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline of Notice

I. Legal Authorities

A. Clean Water Act

This regulation is promulgated under the authority of sections 301, 304(h), and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1361(a) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the EPA Administrator to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his functions under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 403.12).

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures.* * *'' (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C.300j–9(a)).

II. Overview of Methods Updates

EPA has promulgated analytical methods for all currently regulated wastewater and drinking water pollutants and contaminants. In most cases, EPA has approved use of more than one analytical method for measurement of a contaminant, and laboratories may use any approved method for determining compliance with a monitoring requirement. After any regulation is published, EPA may amend the regulations to approve new methods or modifications to approved methods.

Many of the analytical methods already promulgated by EPA have been published by other organizations, including the American Society for Testing Materials (ASTM), United States Geological Survey (USGS), and United States Department of Energy (DOE). In addition, three other organizations (American Public Health Association, American Water Works Association and Water Environment Federation) jointly publish *Standard Methods for Examination of Water and Wastewater* (referred to as ''Standard Methods''). This rule approves use of updated versions of currently promulgated ASTM Methods, Standard Methods, and USGS methods at 40 CFR part 136 for compliance with wastewater standards and monitoring requirements. This rule also approves updated versions of currently promulgated methods in the tables of analytical methods listed at 40 CFR parts 141 and 143 for analyses of drinking water contaminants. The drinking water methods included in this rule are published by ASTM, Standard Methods, and DOE. These organizations publish updated manuals of methods from time to time. Some of the methods in the updated manuals contain no change from previously published editions. Other methods contain no significant changes, only minor technical improvements that make the methods safer and/or easier to use. Today's amendments contain only methods that have no changes or only minor technical improvements. No EPA methods are being updated.

This rule does not withdraw from use any currently promulgated method. For an NPDES permit, the permitting authority should decide the appropriate method based on the nature of the particular water sample to be tested and based on the measurement level of concern.

Today's amendments allow use of updated versions of methods, as outlined below. Each write-up uniquely defined by an identifying method number is counted as a single updated method, regardless of the nature of changes. Even if the only change to the method is its inclusion in a more recent published edition of a methods manual (e.g, 19th Edition of Standard Methods), it is considered an updated method.

A. Amendments to Methods at 40 CFR Part 136 for Monitoring Wastewater

Today's amendments allow use of 19 updated methods published by the American Society for Testing and Materials (ASTM) in the 1999 *Annual Book of ASTM Standards,* Vols. 11.01 and 11.02 for determinations of chemical and radionuclide contaminants, and physical parameters. Previously published versions of these methods, if already promulgated by EPA, remain approved.

Today's amendments also allow use of 189 updated methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater,* 19th edition, 1995, and 20th edition, 1998, for determinations of chemical, microbiological and radionuclide contaminants, and physical parameters.

EPA is also amending 40 CFR Part 136 to update USGS Method I–1472–85 to Method I–4471–97 for determination of cadmium, and 21 methods published by USGS in open file reports and method compendiums. The 21 USGS methods are for the determination of one or more analytes . These methods employ the same analytical procedures and technologies that are employed in promulgated EPA and VCSB methods. These USGS methods will give the analytical community a greater selection of methods.

Finally, today's amendments correct typographical errors in the tables of methods, table footnotes, and sources.

B. Amendments to Methods at 40 CFR Part 141 for Monitoring Primary Drinking Water Contaminants

Today's amendments allow use of 12 updated methods that are published in the 1999 *Annual Book of ASTM Standards,* Vols. 11.01 and 11.02, for determinations of chemical and radionuclide contaminants, and

physical parameters. Use of previously promulgated versions of ASTM methods that are published in these volumes, but have not been revised from previous editions, is also allowed.

Today's amendments also allow use of 62 updated methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater,* 20th edition, 1998, for determinations of chemical, microbiological and radionuclide contaminants, and physical parameters.

Today's amendments allow use of six updated methods published by DOE in the document ''EML Procedures Manual,'' 28th Edition, Volume 1, 1997, for determinations of radionuclide contaminants.

C. Amendments to Methods at 40 CFR Part 143 for Monitoring Secondary Drinking Water Contaminants

Today's amendments list an updated version of one chemistry method (D 4327–97) published in the 1999 *Annual Book of ASTM Standards,* Vol. 11.01.

Today's amendments also list updated versions of 12 methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater,* 20th edition, 1998, for determinations of secondary chemical contaminants and physical parameters.

III. Reasons for Using Direct Final Rulemaking

The Agency is promulgating these amendments as a ''direct final'' rule. EPA is publishing this rule without prior proposal because we view this as noncontroversial amendments and anticipate no adverse comment. Today's action approves updated versions of analytical methods published by several organizations in recent editions of methods manuals or recent publications. These updated versions contain no significant changes, only minor technical improvements that make the methods safer and/or easier to use. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to update these methods if adverse comments are filed. This rule will be effective on May 16, 2001 without further notice unless we receive adverse comment by March 19, 2001. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. We will address all public comments in a subsequent final rule based on the companion proposed rule published elsewhere in today's **Federal Register**. We will not institute a second comment period on the action. Any parties interested in commenting must do so at this time.

IV. Description of the Amendments in Today's Actions

The Agency is amending the tables of methods at 40 CFR Parts 136, 141 and 143 to include recently updated versions of certain analytical methods and to correct typographical errors as explained below.

A. Approval of Updated Versions of Analytical Methods

The updated versions of methods listed at 40 CFR Parts 136, 141, and 143 discussed in this section contain updates of currently promulgated methods that interested parties, such as public water systems, NPDES permit writers, pretreatment coordinators, laboratory personnel, certification officials, and regulatory authorities, will consider to be noncontroversial and generally useful.

1. American Society for Testing and Materials (ASTM) Methods for Analyses of Wastewater and Drinking Water

In today's rule, EPA is amending 40 CFR Parts 136, 141, and 143 to include updated ASTM methods that are published in Vols. 11.01 and 11.02 of the ASTM's *Annual Book of Standards* [ASTM 1999]. The changes, if any, in the updated ASTM methods that are included in today's rule are editorial changes or minor technical clarifications. An example of an editorial change is the replacement of the unit for the measurement of radioactivity, picocurie, with the unit, Becquerel; 1 Becquerel equals 27 picocuries. The change to Becquerel conforms the ASTM methods to the unit of radioactivity measurement that is recommended by the International Union for Pure and Applied Chemistry (IUPAC), which is an international organization that recommends standards for units of measurement.

Examples of minor technical changes are recommendations for the safe handling of hazardous materials and safer or better ways to conduct certain hazardous or complicated analytical procedures. Some of the ASTM methods have been augmented with additional tables of method performance data. The updated ASTM methods do not contain substantive changes in procedures or instrumentation. Because EPA is not withdrawing approval of the currently approved version of any ASTM method, approval of the revised methods should have no adverse effect on users.

a. Wastewater Methods

Nineteen ASTM methods that are published in the 1999 *Annual Book of Standards* (ASTM 1999) and that have been updated from previous versions of these methods are approved in today's rule at 40 CFR Part 136 for wastewater compliance monitoring. Table 1 lists the 19 revised ASTM wastewater methods.

TABLE 1—REVISED ASTM WASTEWATER METHODS

Currently Approved Version	1999 Edition Version
D 858–90	D 858–95
D 859–88	D 859–94
D 1068–90	D 1068–96
D 1125–91	D 1125–95
D 1126–86(92)	D 1126–96
D 1246–82(88)	D 1246–95
D 1252–88	D 1252–95
D 1426–93	D 1426–98
D 1688–90	D 1688–95
D 1889–88	D 1889–94
D 2036–91	D 2036–98
D 2972–93	D 2972–97
D 3557–90	D 3557–95
D 3558–90	D 3558–94
D 3559–90	D 3559–96
D 3859–93	D 3859–98
D 3867–90	D 3867–99
D 4190–82(88)	D 4190–94
D 4382–91	D 4382–95

b. Drinking Water Methods for Primary and Secondary Drinking Water Contaminants

Twelve ASTM methods that are published in the 1999 *Annual Book of Standards* (ASTM 1999) and that have been updated from previous versions of these methods are approved in today's rule at 40 CFR part 141 for drinking water compliance monitoring. Because one of the updated methods, D 4327–97, is also applicable to determinations of both chloride and sulfate, this method is also recommended in the table at 40 CFR part 143 for monitoring of these secondary contaminants. Three methods, D 3972 for uranium, and D 2460 and D 3454 for radium, have been updated to describe an optional computation of a total propagated uncertainty (TPU). EPA is approving these updated radionuclide methods. Although the TPU computation is technically satisfactory, it requires more

effort than the uncertainty computation for radionuclide measurements specified at 40 CFR 141.25(c) and 141.26(a). EPA does not preclude use of the TPU computation, but the Agency believes that this computation is not necessary to obtain an accurate determination of uncertainty. Therefore, use of the computation specified in the CFR is recommended. Table 2 lists the 12 revised ASTM drinking water methods.

TABLE 2.—REVISED ASTM DRINKING WATER METHODS

Currently Approved Version	1999 Edition Version
D 2036–91	D 2036–98
D 2460–90	D 2460–97
D 2907–91	D 2907–97
D 2972–93	D 2972–97
D 3454–91	D 3454–97
D 3559–95	D 3559–96
D 3645–93	D 3645–97
D 3859–93	D 3859–98
D 3972–90	D 3972–97
D 4327–91	D 4327–97
D 4785–88	D 4785–93
D 5174–91	D 5174–97

2. APHA/AWWA/WEF Methods (Standard Methods)

a. Wastewater Methods

In today's rule, EPA is amending 40 CFR part 136 to include 189 updated methods that are published in the 19th (APHA 1995) and 20th (APHA 1998) Editions of Standard Methods. 40 CFR Part 136 currently includes only methods listed in the 18th Edition (APHA 1992). Because EPA is not withdrawing approval of the currently promulgated version of any Standard Method, approval of these methods in this rulemaking should have no adverse effect on users.

Thirty of the 189 Standard Methods being approved contain minor technical and/or editorial revisions to the corresponding promulgated 18th Edition versions. The revisions are intended to improve method usability. Examples of these changes include: better explanations on conducting a specific step in the method; recommendations for safer handling or disposal of hazardous reagents; and options to use alternative procedures, reagents, or equipment (such as the option to use capillary columns in Method 6200 C, and the merger of Methods 6220 B and 6230 B into one method, 6200 C).

The other 159 methods remain unchanged from the currently promulgated methods. The only difference is that they are included in a more recent edition of Standard Methods and in some cases contain a different identifying method number. Method number changes between the 18th, 19th, and 20th editions occurred in 27 instances. These changes in numbering are provided in Table 3.

TABLE 3.—STANDARD METHODS NUMBER CHANGES

18th Edition	19th Edition	20th Edition
3500–Al D	3500–Al D	3500–Al B
3500–As C	3500–As C	3500–As B
3500–Be D	3500–Be D	Dropped
3500–Cd D	3500–Cd D	Dropped
3500–Ca D	3500–Ca D	3500–Ca B
3500–Cr D	3500–Cr D	3500–Cr B
3500–Cu D	3500–Cu D	3500–Cu B
3500–Cu E	3500–Cu E	3500–Cu C
3500–Fe D	3500–Fe D	3500–Fe B
3500–Pb D	3500–Pb D	3500–Pb B
3500–Mg D	3500–Mg D	Dropped
3500–Mn D	3500–Mn D	3500–Mn B
3500–K D	3500–K D	3500–K B
3500–Na D	3500–Na D	3500–Na B
3500–V D	3500–V D	3500–V B
3500–Zn E	3500–Zn E	Dropped
3500–Zn F	3500–Zn F	3500–Zn B
4500–NH_3 C	Dropped	Dropped
4500–NH_3 E	4500–NH_3 C	4500–NH_3 C
4500–NH_3 F	4500–NH_3 D	4500–NH_3 D
4500–NH_3 G	4500–NH_3 E	4500–NH_3 E
4500–NH_3 H	4500–NH_3 G	4500–NH_3 G
4500–S^{-2} E	4500–S^{-2}F	4500–S^{-2} F
4500–Si D	4500–Si D	4500–SiO_2 C
6210 B	6210 B	6200 B
6220 B	6220 B	6220 C
6230 C	6230 B	6230 C

Five methods have been dropped from recent editions of Standards Methods. These methods are not being withdrawn from 40 CFR Part 136 because the methods are technically sound and there may be laboratories successfully using these methods. The five methods dropped from Standard Methods are Method 4500–NH_3 C, which was not included in the 19th edition, and Methods 3500–Be D, 3500–Cd D, 3500–Mg D, and 3500–Zn E, which were not included in the 20th edition.

b. Drinking Water Methods for Primary and Secondary Drinking Water Contaminants

EPA is also amending 40 CFR Parts 141 and 143 to add 71 methods that are published in the 20th Edition of Standard Methods. Previous promulgated versions of these methods, which are published in 18th and 19th Editions of Standard Methods, are listed at 40 CFR Parts 141 and 143. Because EPA is not withdrawing approval of the currently promulgated version of any Standard Method, approval of the updated revised methods in this rulemaking should have no adverse effect on users.

Of the 71 Standard Methods methods included in today's rule, 52 methods are unchanged from previous versions. The remaining 19 methods contain minor editorial changes or technical clarifications. Some of these revisions are minor modifications or voluntary but useful options, such as better explanations on conducting a specific step in the method; recommendations for safer handling or disposal of hazardous reagents; and options to use alternative procedures, reagents, or equipment. The method numbers for five methods changed between the 19th and 20th editions. These changes in numbering are provided in Table 4.

TABLE 4.—STANDARD METHODS NUMBER CHANGES

19th Edition	20th Edition
3500–Ca D	3500–Ca B
3500–Mg E	3500–Mg B
4500–Si D	4500–SiO_2 C
4500–Si E	4500–SiO_2 D
4500–Si F	4500–SiO_2 E

3. USGS Methods for Analyses of Wastewater

In today's rule, EPA is amending 40 CFR Part 136 to update USGS Method I–1472–85 to Method I–4471–97 for the determination of cadmium, and to allow use of 21 updated methods published by USGS in open file reports and method compendiums. At the request of USGS, the 21 methods are being promulgated for the determination of one or more analytes. These 21 USGS methods employ the same analytical procedures and technologies that are employed in approved EPA and voluntary consensus standards bodies (VCSB) methods. Approval of these USGS methods will give the analytical community a greater selection of methods.

4. DOE Methods for Analyses of Radionuclides in Drinking Water

In today's rule, EPA is amending 40 CFR Part 141 to add updated versions of six radionuclide methods that are published by DOE in the *EML Procedures Manual,* 28th Edition, Volume 1, 1997 (DOE 1997). The six methods are Ra–05, Sr–01, Sr–02, U–02, U–04, and Ga–01–R. Two of the methods in the 1997 DOE manual have been renumbered. Method Ra–05 is now Ra–04 and the method referred to as Sect. 4.5.4.3 in the 1990 manual has been given the method number Ga–01–R. Four of the methods in the 1997 DOE manual are unchanged. One method, Method Ga–01–R, has minor editorial changes. In Method U–02, alpha spectrometry for uranium determinations, the sample preparation procedure has been revised and now allows proceeding directly to the microprecipitation step. This change eliminates the mercury cathode electrolysis isotope separation step without affecting the sensitivity or selectivity of the analysis. In the 1990 version of Method U–02, this isotope separation step was optional for drinking water samples. This previous version of U–02 continues to be approved along with the 1990 versions of the other five DOE methods. The Agency, however, strongly recommends use of the 1997 version of U–02, because it eliminates the need for radiochemistry laboratories to handle large quantities of liquid mercury.

B. Typographical Errors

Today's rule corrects typographical errors in the CFR tables at 40 CFR Part 136, and also updates references as appropriate. All of the amendments to the tables are minor, and do not impose any new analytical requirements. Today's rule incorporates the following technical corrections:

(1) Footnote 38 to Table IB at 40 CFR Part 136.3 is corrected and updated to reference Trichlorotrifluorethane (1,1,2-trichloro-1,2,2-trifluoroethane; CFC–113) and n-hexane as approved extraction solvents for the oil and grease Standard Method 5520 B. Previously, trichlorofluoromethane (CFC–11) was incorrectly listed.

(2) The Standard Methods digestion procedure that precedes Kjeldahl Nitrogen determination is corrected to reference Standard Methods 4500–Norg B or C. Previously, Standard Methods 4500 NH_3 B or C were listed, which provide procedures for ammonia distillation and titrimetric determination (not digestion), respectively.

(3) Footnote 34 and its associated source listing is updated to reflect a change in method ownership for Direct Current Plasma (DCP) Method AES0029, developed by Fisons and acquired by Thermo Jarrell Ash.

(4) The reference for the Nickel Colorimetric (Heptoxime) method is corrected to include Standard Method 3500–Ni D from the 17th Edition instead of the 18th Edition. Method 3500–Ni D was not included in the 18th Edition of Standard Methods.

(5) Incorrect page number listings for USGS methods were corrected.

(6) The CFR contains two references with the same number. The second reference (40) in Section 136.3(b) has been renumbered (41) and reference (41) has been renumbered (42).

C. Performance-based Measurement System

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytical methods in water programs through implementation of a performance-based approach to environmental measurements. On October 6, 1997, EPA published a notice of the Agency's intent to implement a performance-based measurement system (PBMS) in all media programs to the extent feasible (62 FR 52098). EPA's water program offices have developed a plan to implement PBMS. EPA anticipates that the final rule to implement PBMS in water programs will be based on the March 28, 1997 proposed rule.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule approves new and revised versions of currently approved ASTM Methods, Standard Methods, United States Geological Survey (USGS), and United States Department of Energy (DOE) methods for compliance with wastewater monitoring and drinking water standards and monitoring requirements but does not require their use. Previous versions of these ASTM, Standard Methods, USGS, and DOE methods will not be withdrawn. Public water systems and laboratories performing analyses on behalf of these systems may continue to use the previous versions after the promulgation of today's rule. The final rule merely provides additional options. Any of the testing procedures currently approved at 40 CFR parts 136, 141, or 143 can be used if monitoring is otherwise required for this pollutant under the CWA or SDWA. This rule also makes minor technical corrections, amendments, and clarifications to the regulations.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

This rule approves the use of analytical methods for conducting analysis for contaminants in wastewater and drinking water and thus provides operational flexibility to laboratory analysts. Since the rule does not withdraw earlier versions of methods, EPA anticipates no increase in expenditure or burden.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action merely provides additional options on the selection of testing procedures when monitoring is otherwise required under the CWA or SDWA. Any of the testing procedures approved at 40 CFR parts 136, 141, or 143 can be used if such monitoring is required for a pollutant or contaminant.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when EPA decides not to use available and applicable voluntary consensus standards.

In this rulemaking EPA is approving newer versions of voluntary consensus standards published by ASTM and Standard Methods for many wastewater and drinking water contaminants. EPA recognizes that other voluntary consensus standards may also be available for the contaminants covered by this rule. In order to expedite publication of this rule as a direct final rule, EPA has chosen not to propose other voluntary consensus methods at this time. EPA plans to address the

availability of other voluntary consensus methods in subsequent rules.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither ''economically significant'' as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule approves the use of additional analytical methods by laboratories conducting analysis in wastewater and drinking water. Today's action does not, however, require use of the alternative methods. The rule provides laboratory analysts with other options to the list of currently approved testing procedures under 40 CFR parts 136, 141, and 143 which can be used if monitoring is otherwise required for these pollutants under the CWA or SDWA. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule approves new and updated analytical methods for drinking water compliance monitoring and wastewater compliance monitoring. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 16, 2001.

VI. References

APHA 1992. Eighteenth edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

APHA 1995. Nineteenth edition of Standard Methods for the Examination of Water and Wastewater, 1995, American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

APHA 1998. Twentieth edition of Standard Methods for the Examination of Water and Wastewater, 1998, American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

ASTM 1999. 1999 Annual Book of ASTM Standards, Vols. 11.01 and 11.02, American Society of Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959.

AWWA 1996. ''Standard Methods—A Closer Look,'' Posavec, Steve, in Opflow, Vol.22, No.2, February 1996, American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235.

DOE 1997 ''EML Procedures Manual'', 28th Edition, Volume 1, 1997. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

USGS 1989. Fishman, M.J., et al, ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments,'' U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO.

USGS 1992. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146 of the U.S. Geological Survey, Denver, CO.

USGS 1993. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment'', Open File Report (OFR) 93–125 of the U.S. Geological Survey, Denver, CO.

USGS 1993. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrometry'', Open File Report (OFR) 93–449 of the U.S. Geological Survey, Denver, CO.

USGS 1994. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors'' of the U.S. Geological Survey, Denver, CO.

USGS 1997. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 97–198 of the U.S. Geological Survey, Denver, CO.

USGS 1998 ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion and an Automated Photometric Finish That Includes Digest Cleanup by Gas Diffusion''. Open File Report (OFR) 00–170 of the U.S. Geological Survey, Denver, CO.

USGS 1998. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediments by Graphite Furnace-Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639. Table IB, Note 49.

USGS 1998. ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry'' , Open File Report (OFR) 98–165 of the U.S. Geological Survey, Denver, CO.

List of Subjects

40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Radiation Protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Water supply.

Dated: December 11, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.3 is amended:

a. In paragraph (a) by revising Tables IA, IB, IC, ID, and IE.

b. In paragraph (b) revise references (6) and (10), remove reference (41), redesignate the second reference (40) as (41), redesignate reference (43) as (51), and add references (42) through (50) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(a) * * *

TABLE 1A.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	Standard Methods 18th, 19th, 20th Ed.	ASTM	USGS
Bacteria:					
1. Coliform (fecal), number per 100 mL..	Most Probable Number (MPN), 5 tube. 3 dilution, or Membrane filter (MF) [2], single step.	p.132 [3] p.124 [3]	9221C E [4] 9222D [4]		B–0050–85 [5]
2. Coliform (fecal) in presence of chlorine, number per 100 mL..	MPN, 5 tube, 3 dilution, or MF, single step [6]	p.132 [3] p.124 [3]	9221C E [3] 9221D [4]		
3. Coliform (total), number per 100 mL..	MPN, 5 tube, 3 dilution, or MF [2], single step or two step.	p.114 [3] p. 108 [3]	9221B [4] 9222B [4]		B–0025–85 [5]
4. Coliform (total), in presence of chlorine, number per 100 mL..	MPN, 5 tube, 3 dilution, or MF [2] with enrichment	p. 114 [3] p. 111 [3]	9221B [4] 9222(B+B.5c) [4]		
5. Fecal streptococci, number per 100 mL..	MPN, 5 tube, 3 dilution, ... MF [2], or ..... Plate count	p. 139 [3] p. 136 [3] p.143 [3]	9230B [4] 9230C [4]		B–0055–85 [5]
Aquatic Toxicity:					
6. Toxicity, acute, fresh water organisms, LC50, percent effluent..	Daphnia, Ceriodaphnia, Fathead Minnow, Rainbow Trout, Brook Trout, or Bannerfish Shiner mortality.	Sec. 9 [7]			
7. Toxicity, acute, estuarine and marine organisms, LC50, percent effluent..	Mysid, Sheepshead Minnow, or Menidia spp. mortality.	Sec. 9 [7]			
8. Toxicity, chronic, fresh water organisms, NOEC or IC25, percent effluent..	Fathead minnow larval survival and growth. Fathead minnow embryo-larval survival and teratogenicity. Ceriodaphnia survival and reproduction. Selenastrum growth	1000.0 [8] 1001.0 [8] 1002.0 [8] 1003.0 [8]			

TABLE 1A.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard Methods 18th, 19th, 20th Ed.	ASTM	USGS
9. Toxicity, chronic, estuarine and marine organisms,NOEC or IC25, percent effluent..	Sheepshead minnow larval survival and growth. Sheepshead minnow embryo-larval survival and teratogenicity. Menidia beryllina larval and growth. Mysidopsis bahia survival, growth, and fecundity. Arbacia punctulata fertilization. Champia parvula reproduction.	1004.0 [9] 1005.0 [9] 1006.0 [9] 1007.0 [9] 1008.0 [9] 1009.0 [9]			

Notes to Table IA:

[1] The method must be specified when results are reported.

[2] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017.

[4] APHA. 1998, 1995, 1992. Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 20th, 19th, and 18th Editions. Amer. Publ. Hlth. Assoc., Washington, DC.

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of Interior, Reston, Virginia.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] USEPA. 1993. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Fourth Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. August 1993, EPA/600/4–90/027F.

[8] USEPA. 1994. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Third Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency USEPA. 1994, Cincinnati, Ohio. (July 1994, EPA/600/4–91/002).

[9] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio (July 1994, EPA/600/4–91/003). These methods do not apply to marine waters of the Pacific Ocean.

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
1. Acidity, as $CaCO_3$, mg/L:					
Electrometric endpoint or phenolphthalein endpoint.	305.1	2310 B(4a) [18th, 19th, 20th].	D1067–92	I–1020–85	
2. Alkalinity, as CaCO3, mg/L:					
Electrometric or Colormetric titration to pH 4.5, manual or automatic.	310.1	2320 B [18th, 19th, 20th].	D1067–92	I–1030–85	973.43.[3]
	310.2	.....		I–2030–85	
3. Aluminum—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	202.1	3111 D [18th, 19th].		I–3051–85	
AA furnace	202.2	3113 B [18th, 19th].			
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES) [36].	[5] 200.7	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
Direct Current Plasma (DCP) [36].	.....	.....	D4190–94		Note 34.
Colorimetric (Eriochrome cyanine R).	3500–Al B [20th] and 3500–Al D [18th, 19th]				
4. Ammonia (as N), mg/L:					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Manual, distillation (at pH 9.5) [6] followed by:	350.2	4500–NH_3 B [18th, 19th, 20th].			973.49.[3]
Nesserization	350.2	4500–NH_3 [18th].	D1426–98(A)	I–3520–85	973.49.[3]
Titration	350.2	4500–NH_3C [19th, 20th] and 4500–NH_3 C [18th].			
Electrode	350.3	4500–NH_3 D or E [19th, 20th] and 4500–NH_3 F or G [18th].	D1426–98(B)		
Automated phenate, or	350.1	4500–NH_3 G [19th, 20th] and 4500–NH_2 H [18th].		I–4523–85	
Automated electrode					Note 7.
5. Anitomy—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	204.1	3111 B [18th, 19th].			
AA furnace	204.2	3113 B [18th, 19th].			
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].			
6. Arsenic—Total,[4] mg/L:					
Digestion [4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d [18th, 19th].	D2972–97(B)	I–3062–85	
AA furnace	206.2	3113 B [18th, 19th].	D2972–97(C)	I–4063–98[49]	
ICP/AES [36] or	200.7 [5]	3120 B [18th, 19th, 20th].			
Colorimetric (SDDC)	206.4	3500–As B [20th] and 3500–As C [18th, 19th].	2972–97(A)	I–3060–85	
7. Barium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [14]	208.1	3111 D [18th, 19th].		I–3084–85	
AA furnace	208.2	3113 B [18th, 19th].	4382–95		
ICP/AES [14]	200.7 [5]	3120 B [18th, 19th, 20th].			
DCP [14]					Note 34.
8. Beryllium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	210.1	3111 D [18th, 19th].	D3645–93(88)(A)	I–3095–85	
AA furnace	210.2	3113 B [18th, 19th].	D3645–93(88)(B)		
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or			D4190–94		Note 34.
Colorimetric (aluminon)		3500–Be D [18th, 19th].			
9. Biochemical oxygen demand (BOD_5), mg/L:					
Dissolved Oxygen Depletion.	405.1	5210 B [18th, 19th, 20th].		1–1578–78 [8]	973.44,[3] p. 17.[9]
10. Boron [37]—Total, mg/L:					
Colorimetric (curcumin)	212.3	4500–B B [18th, 19th 20th].		I–3112–85	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
ICP/AES, or	200.7 [5] 20th]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP			D4190–94		Note 34.
11. Bromide, mg/L:					
Titrimetric	320.1		D1246–95(C)	I–1125–85	p. S44.[10]
12. Cadmium—Total,[4] mg/L;					
Digestion [4] followed by:					
AA direct aspiration [36]	213.1	3111 B or C [18th, 19th].	D3557–95 (A or B)	I–3135–85 or I–3136–85.	974.27,[3] p. 37.[9]
AA furnace	213.2	3113 B [18th, 19th].	D3557–95(D)	I–4138–89 [44]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36]			D4190–94		Note 34.
Voltametry,[11] or			D3557–95(C)		
Colorimetric (Dithizone)		3550–Cd D [18th, 19th].			
13. Calcium—Total,[4] mg/L;					
Digestion [4] followed by:					
AA direct aspiration	215.1	3111 B [18th, 19th].	D511–93(B)	I–3152–85	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or					Note 34.
Titrimetric (EDTA)	215.2	3500–Ca B [20th] and 3500–Ca D [19th, 20th].	D551–93(A)		
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L: [12]					
Dissolved Oxygen Depletion with nitrification inhibitor.		521 B [18th, 19th, 20th].			
15. Chemical oxygen demand (COD), mg/L;					
Titrimetric,	410.1	5220 C [18th, 19th, 20th].	D1252–95(A)	I–3560–85	973.46,[3] p. 17.[9]
or	410.2 410.3			I–3562–85	
Spectrophotometric, manual or automatic.	410.4	5220 D [18th, 19th, 20th].	D1252–95(B)	I–3561–85	Notes 13, 14.
16. Chloride, mg/L:					
Titrimetric (silver nitrate) or		4500–Cl B [18th, 19th, 20th].	D512–89(B)	I–1183–85	
(Mercuric nitrate)	325.3	4500–Cl C [18th, 19th, 20th].	D512–89(A)	I–1184–85	973.51.[3]
Colorimetric, manual or				I–1187–85	
Automated (Ferricyanide)	325.1 or 325.2	4500–Cl E [18th, 19th, 20th].		I–2187–85	
17. Chlorine—Total residual, mg/L; Titrimetric:					
Amperometric direct	330.1	4500–Cl D [18th, 19th, 20th].	D1253–86(92)		
Iodometric direct	330.3	4500–Cl B [18th, 19th, 20th].			
Back titration ether endpoint [15] or.	330.2	4500–Cl C [18th, 19th, 20th].			
DPD–FAS	330.4	4500–Cl F [18th, 19th, 20th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Spectrophotometric, DPD Or Electrode.	330.5	4500–Cl G [18th, 19th, 20th].			Note 16.
18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by:					
AA chelaation-extraction or	218.4	3111 C [18th, 19th].		I–1232–85	
Colorimetric (Diphenylcarbazide).	.....	3500–Cr B [20th] and. 3500–Cr D [18th, 19th].	D1687–92(A)	I–1230–85D	
19. Chromium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	218.1	3111 B [18th, 19th].	D1687–92(B)	I–3236–85	974.27.[3]
AA chelation-extraction ...	218.3	3111 C [18th, 19th].			
AA furnace	218.2	3113 B [18th, 19th].	D1687–92(C)	I–3233–93 [46]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].			
DCP,[36] or	.....	.....	D4190–94		Note 34.
Colorimetric (Diphenylcarbazide).	3500–Cr B [20th and 3500–Cr D [18th, 19th]				
20. Cobalt—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	219.1	3111 B or C [18th, 19th].	D3558–94(A or B)	I–3239–85	p. 37.[9]
AA furnace	219.2	3113 B [18th, 19th].	D3558–94(C)	I–4243–89 [44]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP	.....	.....	D4190–94		Note 34.
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI), or (Platinum cobalt), or	110.1	2120 E [18th, 19th, 20th].			Note 18.
Spectrophotometric	110.2	2120 B [18th, 19th, 20th].		I–1250–85	
	110.3	2120 C [18th, 19th, 20th].			
22. Copper—Total,[4] mg/L; Digestion4 followed by:					
AA direct aspiration [36]	220.1	3111 B or C [18th, 19th].	D1688–95(A or B)	I–3270–85 or I–3271–85	974.27 [3] p. 37.[9]
AA furnace	220.2	3113 B [18th, 19th].	D1688–95(C)	I–4274–89 [44]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [44]	
DCP [36] or	.....	.....	D–4190–94		Note 34.
Colorimetric (Neocuproine) or.	.....	3500–Cu B [20th] and 3500 Cu D [18th, 19th].			
(Bicinchoninate)	.....	3500–Cu C [20th] and 3500–As B [18th, 19th].			Note 19.
23. Cyanide—Total, mg/L:					
Manual distillation with $MgCl^{22}$ followed by.	.....	4500–CN C [18th, 19th, 20th].	D2036–98(A)		

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Titrimetric, or	.....	4500–CN D [18th, 19th, 20th].			p. 22.[9]
Spectrophotometric, manual or.	[31] 335.2	4500–CN E [18th, 19th, 20th].	D2036–98(A).	I–3300–85	
Automated [20]	[31] 335.3	.....		I–4327–85	
24. Cyanide amenable to chlorination, mg/L:					
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500–CN G [18th, 19th, 20th].	D2036–98(B)		
25. Fluoride—Total, mg/L:					
Manual distillation [6] followed by.	.....	4500–F B [18th, 19th, 20th].			
Electrode, manual or	340.2	4500–F C [18th, 19th, 20].	D1179–93(B)		
Automated	.....	.....		I–4327–85	
Colorimetric (SPADNS)	340.1	4500–F D [18th, 19th, 20th].	D1179–93(A)		
Or Automated complexone.	340.3	4500–F E [18th, 19th, 20th].			
26. Gold—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	231.1	3111 B [18th, 19th].			
AA furnace, or DCP	231.2				
.....	.....	.....			Note 34.
27. Hardness—Total, as $CaCO_3$ [23], mg/L					
Automated colorimetric,	130.1				
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33).	130.2	2340 B or C [18th, 19th, 20th].	D1126–86(92)	I–1338–85	973.52B.[3]
28. Hydrogen ion (pH), pH units					
Electrometric measurement, or Automated electrode.	150.1	4500–H+ B [18th, 19th, 20th].	D1293–84 (90)(A or B)	I–1586–85	973.41.[3]
.....	.....	.....		I–2587–85	Note 21.
29. Iridium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration or AA furnace.	235.1	3111 B [18th, 19th]. 235.2.			
30. Iron—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	236.1	3111 B or C [18th, 19th].	D1068–96(A or B)	I–3381–85	974.27.[3]
AA furnace	236.2	3113 B [18th, 19th].	D1068–96(C) ICP/AES [36]	200.7 [5]	I–4471–97 [50]
DCP [36] or	.....	.....	D4190–94		Note 34.
Colorimetric (Phenanthroline).	.....	3500–Fe B [20th] and 3500–Fe D [18th, 19th].	D1068–96(D)		Note 22.
31. Kjeldahl Nitrogen—Total, (as N), mg/L:					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Digestion and distillation followed by:.	351.3	4500–N^{2org} B or C and 4500–NH^{23} B [18th, 19th, 20th].	D3590–89(A)		
Titration	351.3	.....	D3590–89(A)		973.48 [3]
Nesslerization	351.3	4500–NH^{23} C [18th].	D3590–89(A)		
Electrode	351.3	4500–NH^{23} C [19th, 20th] and 4500–NH3 E [18th].			
Automated phenate colorimetric.	351.1	4500–NH^{23} D or E [19th, 20th] and 4500–NH^{23} F or G [18th].	I–4551–78 [8]		
Semi-automated block digestor colorimetric.	351.2	.....	D3590–89(B)	I–4515–91 [45]	
Manual or block digestor potentiometric.	351.4	.....	D3590–89(A)		
Block Digester, followed by:					
Auto distillation and Titration, or Nesslerization.	.....	.....		Note 40.	
Flow injection gas diffusion.	973.483	.....			Note 41.
32. Lead—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	239.1	3111 B or C [18th, 19th].	D3559–96(A or B)	I–3399–85	974.27.[3]
AA furnace	239.2	3113 B [18th, 19th].	D3559–96(D)	I–4403–89 [44]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–9750	
DCP [36]	.....	.....	D4190–94		Note 34.
Voltametry [11] or	.....	.....	D3559'96(C)		
Colorimetric (Dithizone)	.....	3500–Pb B [20th] and 3500–Pb D [18th, 19th].			
33. Magnesium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	242.1	3111 B [18th, 19th].	D511–93(B)	I–3447–85	974.27.[3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP or	.....	.....			Note 34.
Gravimetric	.....	3500–Mg D [18th, 19th].			
34. Manganese—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	243.1	3111 B [18th, 19th].	D858–95(A or B)	I–3454–85	974.27.[3]
AA furnace	243.2	3113 B [18th, 19th].	D858–95(C)		
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP,[36] or	.....	.....	D4190–94		Note 34.
Colorimetric (Persulfate), or.	3500–Mn B [20th] and	3500–Mn D [18th, 19th].			920.203.[3]
(Periodate)	.....	.....			Note 23.
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual or	245.1	3112 B [18th, 19th].	D3223–91	I–3462–85	977.22.[3]
Automated	245.2				

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	[43] 1631				
36. Molybdenum—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	246.1	3111 D [18th, 19th].		I–3490–85	
AA furnace	246.2	3113 B [18th, 19th].		I–3492–96 [47]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP	.....	.....			Note 34.
37. Nickel—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	249.1	3111 B or C [18th, 19th].	D1886–90(A or B)	I–3499–85	
AA furnace	249.2	3113 B [18th, 19th].	D1886–90(C)	I–4503–89 [44]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP,[36] or	.....	.....	D4190–94		Note 34.
Colorimetric (heptoxime)	.....	3500–Ni D [17th].			
38. Nitrate (as N), mg/L:					
Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).	352.1	.....			973.50,[3] 419D,[17] p. 28.[9]
39. Nitrate-nitrite (as N), mg/L:					
Cadmium reduction, Manual or.	353.3	4500–NO_3^- E [18th, 19th, 20th].	D3867–99(B)		
Automated, or	353.2	4500–NO_3^- F [18th, 19th, 20th].	D3867–99(A)	I–4545–85	
Automated hydrazine	353.1	4500–NO_3^- H [18th, 19th, 20th].			
40. Nitrite (as N), mg/L; Spectrophotometric:					
Manual or	354.1	4500–NO_2^- B [18th, 19th, 20th].			Note 25.
Automated (Diazotization)	.....	.....		I–4540–85	
41. Oil and grease—Total recoverable, mg/L:					
Gravimetric (extraction) ...	413.1	5520B [18th, 19th, 20th] [38].			
Oil and grease and nonpolar material, mg/L: Hexane extractable material (HEM): n-Hexane extraction and gravimetry [42].	1664A	5520B [18th, 19th, 20th] [39].			
Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry [42].	1664A				
42. Organic carbon—Total (TOC), mg/L:					
Combustion or oxidation	415.1	5310 B, C, or D [18th, 19th, 20th].	D2579–93 (A or B)		973.47,[3] p. 14.[24]
43. Organic nitrogen (as N), mg/L:					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).					
44. Orthophosphate (as P), mg/L; Ascorbic acid method:					
Automated, or	365.1	4500–P F [18th, 19th, 20th].		I–4601–85	973.56.[3]
Manual single reagent	365.2	4500'P E [18th, 19th, 20th].	D515–88(A)		973.55.[3]
Manual two reagent	365.3	.			
45. Osmium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	252.1	3111 D [18th, 19th].			
AA furnace	252.2	.			
46. Oxygen, dissolved, mg/L:					
Winkler (Azide modification), or.	360.2	4500–O C [18th, 19th, 20th].	D888–92(A)	I–1575–78 [8]	973.45B.[3]
Electrode	360.1	4500–O G [18th, 19th, 20th].	D888–92(B)	I–1576–78 [8]	
47. Palladium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	253.1	3111 B [18th, 19th].			p. S27.[10]
AA furnace	253.2				p. S28.[10]
DCP					Note 34.
48. Phenols, mg/L:					
Manual distillation [26]	420.1				Note 27.
Followed by:					
Colorimetric (4AAP) manual, or.	420.1				Note 27.
Automated [19]	420.2				
49. Phosphorus (elemental), mg/L:					
Gas-liquid chromatography.					Note 28.
50. Phosphorus—Total, mg/L:					
Persulfate digestion followed by.	365.2	4500–P B, 5 [18th, 19th, 20th].			973.55.[3]
Manual or	365.2 or 365.3	4500–P E [18th, 19th, 20th].	D515–88(A)		
Automated ascorbic acid reduction.	365.1	4500–P F [18th, 19th, 20th].		1—4600–85	973.56.[3]
Semi-automated block digestor.	365.4		D515–88(B)	I–4610–91 [48]	
51. Platinum—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	255.1	3111 B [18th, 19th].			
AA furnace	255.2				
DCP					Note 34.
52. Potassium—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	258.1	3111 B [18th, 19th].		I–3630–85	973.53.3.[3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Flame photometric, or	.....	3500–K B [20th] and 3500–K D [18th, 19th].			
Colorimetric	.....	.....			317 B.[17]
53. Residue—Total, mg/L:					
Gravimetric, 103–105°	160.3	2540 B [18th, 19th, 20th].		I–3750–85	
54. Residue—filterable, mg/L:					
Gravimetric, 180°	160.1	2540 C [18th, 19th, 20th].		I–1750–85	
55. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105° post washing of residue.	160.2	2540 D [18th, 19th, 20th].		I–3765–85	
56. Residue—settleable, mg/L:					
Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F [18th, 19th, 20th].			
57. Residue—Volatile, mg/L:					
Gravimetric, 550°	160.4	.....		I–3753–85	
58. Rhodium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or ...	265.1	3111 B [18th, 19th].			
AA furnace	265.2				
59. Ruthenium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or ...	267.1	3111 B [18th, 19th].			
AA furnace	267.2				
60. Selenium—Total,[4] mg/L; Digestion [4] followed by:					
AA furnace	270.2	3113 B [18th, 19th].	D3859–98(B)	I–4668–98 [49]	
ICP/AES,[36] or	200.7 [5]	3120 B [18th, 19th, 20th].			
AA gaseous hydride	.....	3114 B [18th, 19th].	D3859–98(A)	I—3667–85	
61. Silica [37]—Dissolved, mg/L; 0.45 micron filtration followed by:					
Colorimetric, Manual or ...	370.1	4500–SiO_2 C [20th] and 4500–SiD [18th, 19th].	D859–94	I–1700–85	
Automated (Molybdosilicate), or.	.....	.....		I–2700–85	
ICP	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
62. Silver—Total,[4] mg/L: Digestion [4, 29] followed by:					
AA direct aspiration	272.1	3111 B or C [18th, 19th].		I–3720–85	974.27,[3] p. 37.[9]
AA furnace	272.2	3113 B [18th, 19th].		I–4724–89 [44]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP	.....	.....			Note 34.
63. Sodium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	273.1	3111 B [18th, 19th].		I–3735–85	973.54.[3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97[50]	
DCP, or	.....	.....			Note 34.

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
Flame photometric	.....	3500 Na B [20th] and 3500 Na D [18th, 19th].			
64. Specific conductance, micromhos/cm at 25° C:					
Wheatstone bridge	120.1	2510 B [18th, 19th, 20th].	D1125–95(A)	I–2781–85	973.40.[3]
65. Sulfate (as SO_4), mg/L:					
Automated colorimetric (barium chloranilate).	375.1				
Gravimetric	375.3	4500–SO_4 $^{-2}$C or D [18th, 19th, 20th].			925.54.[3]
Turbidimetric	375.4	.....	D516–90		426C.[30]
66. Sulfide (as S), mg/L:					
Titrimetric (iodine), or	376.1	4500–S^{-2}F [19th, 20th] or 4500–S^{-2} E [18th].		I–3840–85	
Colorimetric (methylene blue).	376.2	4500–S^{-2}D.			
67. Sulfite (as SO_3), mg/L:					
Titrimetric (iodine-iodate)	377.1	4500–SO_3 $^{-2}$B [18th, 19th, 20th].			
68. Surfactants, mg/L:					
Colorimetric (methylene blue).	425.1	5540 C [18th, 19th, 20th].	D2330–88		
69. Temperature, °C:					
Thermometric	170.1	2550 B [18th, 19th, 20th].			Note 32.
70. Thallium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	279.1	3111 B [18th, 19th.			
AA furnace	279.2				
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			
71. Tin—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	282.1	3111 B [18th, 19th].		I–3850–78 [8]	
AA furnace, or	282.2	3113 B [18th, 19th].			
ICP/AES	200.7 [5]				
72. Titanium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	283.1	3111 D [18th, 19th].			
AA furnace	283.2				
DCP	.....	.....			Note 34.
73. Turbidity, NTU:					
Nephelometric	180.1	2130 B [18th, 19th, 20th].	D1889–94(A)	I–3860–85	
74. Vanadium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	286.1	3111 D [18th, 19th].			
AA furnace	286.2	.....	D3373–93		
ICP/AES	200.7 [5]	3120 B[18th, 19th, 20th].		I–4471–97 [50]	
DCP, or	.....	.....	D4190–94		Note 34.
Colorimetric (Gallic Acid)	.....	3500–V B [20th] and 3500–V D [18th, 19th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,3,5]	Standard methods [Edition(s)]	ASTM	USGS [2]	Other
75. Zinc—Total,[4], mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 B or C [18th, 19th].	D1691–95(A or B)	I–3900–85	974.27,[3] p. 37.[9]
AA furnace	289.2				
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP,[36] or	.....	.....	D4190–94		Note 34.
Colorimetric (Dithizone) or.	.....	3500–Zn E [18th, 19th].			
(Zincon)	.....	3500–Zn B [20th] and 3500–Zn F [18th, 19th].			Note 33.

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al. "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE TO TABLE 1B NOTE 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b. is visibly transparent with a turbidity measurement of 1 NTU or less

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, N.Y. 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency", Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures "total BOD". The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc. Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the manifold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., *et al.*, ''Methods for Analysis of Organic Substances in Water,'' Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrometric procedure.

[28] R.F. Addison and R.G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography,'' Journal of Chromatography, Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029,'' 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals''.

[36] ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals'', CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only the Trichlorotrifluorethane (1,1,2-trichloro-1,2,2-trifluoroethane; CFC–113) and *n*-hexane extraction solvents are approved.

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[42] Method 1664, Revision A ''n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry'' EPA–821–R–98–002, February 1999. Available at NTIS, PB–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161.

[43] The application of clean techniques described in EPA's draft Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment'', Open File Report (OFR) 93–125.

[45] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method'', Open File Report (OFR) 98–xxx.

[46] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 93–449.

[47] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 97–198.

[48] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146.

[49] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639.

[50] ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry'', Open File Report (OFR) 98–165.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number [2 7]			Other approved methods		
	GC	GC/MS	HPLC	Standard methods [Edition(s)]	ASTM	Other
1. Acenaphthene	610	625, 1625	610	6440 B, 6410 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
2. Acenaphthylene	610	625, 1625	610	6440 B, 6410 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
3. Acrolein	603	604, 1624 [4]				
4. Acrylonitrile	603	624, 1624 [4]	610			
5. Anthracene	610	625, 1625	610	6410 B 6440 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.
6. Benzene	602	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
7. Benzidine		625, 1625 [5]	605			Note 3, p.1.
8. Benzo(a)anthracene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
9. Benzo(a)pyrene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
10. Benzo(b)fluoranthene	610	625, 1625	610	6410 B 6440 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.
11. Benzo(g, h, i)perylene	610	625, 1625	610	6410 B 6440 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.
12. Benzo(k)fluoranthene	610	625, 1625	610	6410 B 6440 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2 7]			Other approved methods		
	GC	GC/MS	HPLC	Standard methods [Edition(s)]	ASTM	Other
13. Benzyl chloride						Note 3, p. 130: Note 6, p. S102.
14. Benzyl butyl phthalate	606	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
15. Bis(2-chloroethoxy)methane.	611	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
16. Bis(2-chloroethyl)ether	611	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
17. Bis(2-ethylhexyl)phthalate.	606	625, 1625		6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27
18. Bromodichloromethane	601	624, 1624		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
19. Bromoform	601	624, 1624		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
20. Bromomethane	601	624, 1624		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
21. 4-Bromophenylphenyl ether.	611	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
22. Carbon tetrachloride	601	624, 1624		6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 3, p. 130.
23. 4-Chloro-3-methyl-phenol.	604	625, 1625		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
24. Chlorobenzene	601, 602	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
25. Chloroethane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
26. 2-Chloroethylvinyl ether	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th].		
27. Chloroform	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th].		Note 3, p. 130.
28. Chloromethane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th].		
29. 2-Chloronaphthalene	612	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
30. 2-Chlorophenol	604	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
31. 4-Chlorophenylphenl ether.	611	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
32. Chrysene	610	625, 1625	610	6410 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.
33. Dibenzo(a,h)anthracene.	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
34. Dibromochloromethane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th].		
35. 1,2-Dichlorobenzene	601, 602, 612	624, 625, 1625		6200 B [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
36. 1,3-Dichlorobenzene	601, 602, 612	624,625, 1625		6200 B [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
37. 1,4-Dichlorobenzene	601, 602, 612	624, 625, 1625		6200 B [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
38. 3,3-Dichlorobenzidine		625, 1625	605	6410 B [18th, 19th, 20th]		
39. Dichlorodifuoromethane	601			6200 B [20th] and 6230 B [18th, 19th].		
40. 1,1-Dichloroethane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th].		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2 7]			Other approved methods		
	GC	GC/MS	HPLC	Standard methods [Edition(s)]	ASTM	Other
41. 1,2-Dichloroethane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
42. 1,1-Dichloroethene	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
43. trans 1,2-Dichloroethene.	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
44. 2,4-Dichlorophenol	604	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
45. 1,2-Dichloropropane	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
46. cis-1,3-Dichloropropene	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
47. trans-1,3-Dichloropropene.	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
48. Diethyl phthalate	606	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
49. 2,4-Dimethylphenol	604	625, 1625		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
50. Dimethyl phthalate	606	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
51. Di-n-butyl phthalate	606	625, 1625		6410 B [18th, phthalate 19th, 20th].		Note 9, p. 27.
52 Di-n-octyl phthalate	606	625, 1625		6410 B [18th, phthalate 19th, 20th].		Note 9, p. 27.
53. 2,3-Dinitrophenol	604	625, 1625		6410 B, 6420 B [18th, 19th, 20th].		
54. 2,4-Dinitrotoluene	609	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
55. 2,6-Dinitrotoluene	609	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
56. Epichlorohydrin						Note 3, p. 130; Note 6, p. S102.
57. Ethylbenzene	602	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
58. Fluoranthene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
59. Fluorene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
60. 1,2,3,4,6,7,8-Heptachlorodibenzofuran.		1613				
61. 1,2,3,4,7,8,9-Heptachlorodibenzofuran.		1613				
62. 1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin.		1613				
63. Hexachlorobenzene	612	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
64. Hexachlorobutadiene	612	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.
65. Hexachlorocyclopentadiene.	612	625, 1625B [5]		6410 B [18th, 19th, 20th]		Note 9, p. 27.
66. 1,2,3,4,7,8-Hexachlorodibenzofuran.		1613				
67. 1,2,3,6,7,8-Hexachlorodibenzofuran.		1613				
68. 1,2,3,7,8,9-Hexachlorodibenzofuran.		1613				
69. 2,3,4,6,7,8-Hexachlorodibenzofuran.		1613				
70. 1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin.		1613				
71. 1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin.		1613				
72. 1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin.		1613				
73. Hexachloroethane	616	625, 1625		6410 B [18th, 19th, 20th]		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2 7]			Other approved methods		
	GC	GC/MS	HPLC	Standard methods [Edition(s)]	ASTM	Other
74. Ideno(1,2,3-cd)pyrene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
75. Isophorone	609	625, 1625	.....	6410 B [18th, 19th, 20th]		Note 9, p. 27.
76. Methylene chloride	601	624, 1624	.....	6200 C [18th, 19th, 20th]		Note 3, p. 130.
77. 2-Methyl-4,6-dinitrophenol.	604	625, 1625	.....	6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
78. Naphthalene	610	625, 1625	610	6440 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
79. Nitrobenzene	609	625, 1625	.....	6410 B [18th, 19th, 20th]	D4657–92	Note 9, p. 27.
80. 2-Nitrophenol	604	625, 1625	.....	6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
81. 4-Nitrophenol	604	625, 1625	.....	6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
82. N-Nitrosodimethylamine.	607	625, 1625	.....	6410 B [18th, 19th, 20th]		Note 9, p. 27.
83. N-Nitrosodi-n-propyl-amine.	607	625, 1625 [5]	.....	6410 B [18th, 19th, 20th]		Note 9, p. 27.
84. N-Nitrosodiphenylamine.	607	625, 1625 [5]	.....	6410 B [18th, 19th, 20th]		Note 9, p. 27.
85. Octachlorodibenzofuran	.....	1613				
86. Octachlorodibenzo-*p*-dioxin.	.....	1613				
87. 2,2-Oxybis(1-chloropropane).	611	625, 1625	.....	6410 B [18th, 19th, 20th].		
88. PCB–1016	608	625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 43.
89. PCB–1221	608	625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 43.
90. PCB–1232	608	625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 43.
91. PCB–1242	608	625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 43.
92. PCB–1248	608	625	.....	.		
93. PCB–1254	608	625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 43.
94. PCB–1260	608	625	.....	6410 B, 6630 B [18th, 19th, 20th].		Note 3, p. 43.
95. 1,2,3,7,8-Pentachlorodibenzofuran.	.....	1613				
96. 2,3,4,7,8-Pentachlorodibenzofuran.	.....	1613				
97. 1,2,3,7,8,-Pentachlorodibenzo-*p*-dioxin.	.....	1613				
98. Pentachlorophenol	604	625, 1625	.....	6410 B, 6630 B [18th, 19th, 20th].		Note 3, p. 140; Note 9, p. 27.
99. Phenanthrene	610	625, 1625	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
100. Phenol	604	625, 1625	.....	6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
101. Pyrene	610	625, 1625	610	6440 B, 6410 B [18th, 19th, 20th].	D4675–92	Note 9, p. 27.
102. 2,3,7,8-Tetrachlorodibenzofuran.	.....	1613				
103. 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin.	.....	613, 1613 [5]				
104. 1,1,2,2-Tetrachlooethane.	601	624, 1624	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
105. Tetrachloroethene	601	624, 1624	.....	6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 3, p. 130.
106. Toluene	602	624. 1624	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
107. 1,2,4-Trichlorobenzene.	612	625, 1625	.....	6410 B [18th, 19th, 20th]		Note 3, p. 130; Note 9, p. 27.
108. 1,1,1-Trichloroethane	601	624, 1624	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
109. 1,1,2-Trichloroethane	601	624, 1624	.....	6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2 7]			Other approved methods		
	GC	GC/MS	HPLC	Standard methods [Edition(s)]	ASTM	Other
110. Trichloroethene	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
111. Trichlorofluoromethane	601	624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
112. 2,4,6-Trichlorophenol	604	625, 1625		6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
113. Vinyl chloride	601	624, 1624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		

Table IC notes:

[1] All parameters are expressed in micrograms per liter (μg/L) except for Method 1613 in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The full text of Method 1613 is incorporated by reference into this Part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.

[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625, are preferred methods for these compounds.

[5a] 625, Screening only.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency,'' Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

Note: These warning limits are promulgated as an ''interim final action with a request for comments.''

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk'' 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from ''Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments'' U.S. Geological Survey, Open File Report 93–125.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2 7]	Standard methods 18th, 19th, 20th Ed.	ASTM	Other
1. Aldrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; note 8.
	GC/MS	625	6410 B		
2. Ametryn	GC				Note 3, p. 83; Note 6, p S68.
3. Aminocarb	TLC				Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC				Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
6. Azinphos methyl	GC				Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC				Note 3, p. 104; Note 6, p. S64.
8. α-BHC	GC	608	6630 B & C	3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B		
9. β-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B		
10. δ-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B		
11. δ-BHC (Lindane)	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
12. Captan	GC		6630 B	D3086–90	Note 3, p. 7.
13. Carbaryl	TLC				Note 3, p. 94, Note 6, p. S60.
14. Carbophenothion	GC				Note 4, p. 27; Note 6, p. S73.
15. Chlordane	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
16. Chloropropham	TLC				Note 3, p. 104; Note 6, p. S64.
17. 2,4-D	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
18. 4,4′-DDD	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
19. 4,4′-DDE	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
20. 4,4′-DDT	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7]	Standard methods 18th, 19th, 20th Ed.	ASTM	Other
	GC/MS	625	6410 B		
21. Demeton-O	GC				Note 3, p. 25; Note 6, p. S51.
22. Demeton-S	GC				Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC				Note 3, p. 25; Note 4, p. 27; Note 6, p. S51.
24. Dicamba	GC				Note 3, p. 115.
25. Dichlofenthion	GC				Note 4, p. 27; Note 6, p. S73.
26. Dichloran	GC		6630 B & C		Note 3, p. 7.
27. Dicofol	GC			D3086–90	
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
29. Dioxathion	GC				Note 4, p. 27; Note 6, p. S73.
30. Disulfoton	GC				Note 3, p. 25; Note 6 p. S51.
31. Diuron	TLC				Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B		
34. Endosulfan Sulfate	GC	608	6630 C		Note 8.
	GC/MS	625	6410 B		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B		
36. Endrin aldehyde	GC	608			Note 8.
	GC/MS	625			
37. Ethion	GC				Note 4, p. 27; Note 6, p. S73.
38. Fenuron	TLC				Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC				Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 6, p. S73; Note 8.
	GC/MS	625	6410 B		
42. Isodrin	GC				Note 4, p. 27; Note 6, p. S73.
43. Linuron	GC				Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC		6630 C		Note 3, p. 25; Note 4, p. 27; Note 6, p. S51.
45. Methiocarb	TLC				Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC		6630 B &C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
47. Mexacarbate	TLC				Note 3, p. 94; Note 6, p.S60.
48. Mirex	GC		6630 B & C		Note 3, p. 7; Note 4, p. 27.
49. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
50. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC				Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
53. Parathion ethyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
54. PCNB	GC		6630 B & C		Note 3, p. 7.
55. Perthane	GC			D3086–90	Note 4, p. 27.
56. Prometron	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
57. Prometryn	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
58. Propazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
59. Propham	TLC				Note 3, p. 104; Note 6, p. S64.
60. Propoxur	TLC				Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC				Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC				Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
64. Strobane	GC		6630 B & C		Note 3, p. 7.
65. Swep	TLC				Note 3, p. 104; Note 6, p. S64.
66. 2,4,5-T	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
67. 2,4,5-TP (Silvex)	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
68. Terbuthylazine	GC				Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410B		
70. Trifluralin	GC		6630 B		Note 3, p. 7; Note 9.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit,'' of this Part 136.

[3] ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] ''Methods for Analysis of Organic Substances in Water and Fluvial Sediments,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, ι-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency.'' Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

Note: These warning limits are promulgated as an ''Interim final action with a request for comments.''

[8] ''Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk'', 3M Corporation, Revised 10/28/94.

[9] USGS Method 0—3106—93 from ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors' U.S.Geological Survey Open File Report 94–37

TABLE 1E.—LIST OF APPROVED RADIOLOGIC TEST PROCEDURES

Parameter and units	Method	Reference (method number or page)			
		EPA [1]	Standard methods 18th, 19th, 20th Ed.	ASTM	USGS [2]
1. Alpha-Total, pCi per liter	Proportional or scintillation counter.	900	7110 B	D1943–90.	pp. 75 and 78.[3]
2. Alpha-Counting error, pCi per liter.	Proportional or scintillation counter.	Appendix B	7110 B	D1943–90	p. 79.
3. Beta-Total, pCi per liter	Proportional counter	900.0	7110 B	D1890–90	pp. 75 and 78.[3]
4. Beta-Counting error, pCi	Proportional counter	Appendix B	7110 B	D1890–90	p. 79.
5. (a) Radium Total pCi per liter.	Proportional counter	903.0	7500Ra B	D2460–90	
(b) Ra, pCi per liter	Scintillation counter	903.1	7500Ra C	D3454–91	p. 81.

Table 1E notes:

[1] Prescribed Procedures for Measurement of Radioactivity in Drinking Water, EPA–600/4–80–032 (1980), U.S. Environmental Protection Agency, August 1980.

[2] Fishman, M.J. and Brown, Eugene, ''Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters,'' U.S. Geological Survey, Open-File Report 76–177 (1976).

[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the ''total''.

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(b) * * *

References, Sources, Costs, and Table Citations

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(6) American Public Health Association. 1992, 1995, and 1998. Standard Methods for the Examination of Water and Wastewater. 18th, 19th, and 20th Edition (respectively). Amer. Publ. Hlth. Assoc., 1015 15th Street NW., Washington, DC 20005. Table IA, Note 4. Tables IB, IC, ID, IE.

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(10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994 and 1999 in 40 CFR 136.3, Tables IB, IC, ID, and IE.

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(42) USEPA, January 1999 Errata for the Effluent and Receiving Water Testing Manuals: Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms; Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. U.S. Environmental Protection Agency, Office of Research and Development, Duluth, MN. EPA–600/R–98–182.

(43) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment'', Open File Report (OFR) 93–125. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 44; Table IC, Note 9.

(44) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photmetric Finish that Includes Digest Cleanup by Gas Diffusion'', Open File Report (OFR) 00–170. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 45.

(45) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrometry'', Open File Report (OFR) 93–449. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 46.

(46) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry'', Open File Report (OFR) 97–198. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 47.

(47) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis'' Open File Report (OFR) 92–146. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 48.

(48) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediments by Graphite Furnace-Atomic Absorption Spectrometry'' Open File Report (OFR) 98–639. Table IB, Note 49.

(49) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry'', Open File Report (OFR) 98–165. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 50.

(50) ''Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors'' U.S.Geological Survey Open File Report 94–37. Available from: U.S. Geological Survey, Denver Federal

Center, Box 25425, Denver, CO 80225. Table ID, Note 9.

(c) * * *

(d) * * *

(e) * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended by revising footnote 1 to the table in paragraph (f)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used.

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3. Section 141.23 is amended by revising the table to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

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(k) * * *

(l) * * *

Contaminant	Methodology [1,3]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th, ed.)	Other
1. Alkalinity	Titrimetric		D1067–92B	2320 B	2320 B	
	Electrometric titration					I–1030–85 [5]
2. Antimony	Inductively Coupled Plasma (ICP)-Mass.	200.8 [2]				
	Spectrometry					
	Hydride-Atomic Absorption		D3697–92			
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnance			3113 B		
3. Arsenic [4]	Inductively Coupled Plasma	200.7 [2]		3120 B	3120 B	
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnace		D2972–97C	3113 B		
	Hydride Atomic Absorption		D2972–97B	3114 B		
4. Asbestos	Transmission Electron Microscopy.	100.1 [9]				
	Transmission Electron Microscopy.	100.2 [10]				
5. Barium	Inductively Coupled Plasma	200.7 [2]		3120 B	3120B	
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Direct			3111 D		
	Atomic Absorption; Furnace			3113 B		
6. Berylium	Inductively Coupled Plasma	200.7 [2]		3120 B	3120B	
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnace		D3645–97B	3113 B		
7. Cadmium	Inductively Coupled Plasma	200.7 [2]				
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnace			3113 B		
8. Calcium	EDTA titrimetric		D511–93A	3500–Ca D	3500–Ca	
	Atomic Absorption; Direct Aspiration.		D511–93B	3111 B		
	Inductively Coupled Plasma	200.7 [2]		3120 B	3120 B	
9. Chromium	Inductively Coupled	200.7 [2]		3120 B	3120 B	
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnace			3113 B		
10. Copper	Atomic Absorption; Furnace		D1688–95C	3113 B		
	Atomic Absorption; Direct Aspiration.		D1688–95A	3111 B		
	Inductively Coupled Plasma	200.7 [2]		3120 B	3120 B	
	ICP–Mass spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
11. Conductance	Conductivity		D1125–95A	2510 B	2510 B	
12. Cyanide	Manual Distillation followed by		D2036–98A	4500–CN^- C	4500–CN^- C	
	Spectrophotometric, Amenable		D2036–98B	4500–CN^- G	4500–CN^- G	
	Spectrophotometric Manual		D2036–98A	4500–CN^- E	4500–CN^- E	I–3300–85 [5]
	Spectrophotometric Semi-automated.	335.4 [6]				
Selective Electrode		4500–CN– F	D4500–CN- F			
13. Fluoride	Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	
	Manual Distill.; Color. SPADNS.			4500–F^- B,D	4500–F^- B,D	
	Manual Electrode		D1179–93B	4500–F^- C	4500–F^- C	
	Automated Electrode					380–75WE [11]
	Automated Alizarin			4500–F^- E	4500–F^-	129–71W [11]
14. Lead	Atomic Absorption; Furnace		D3559–96D	3113 B		

Contaminant	Methodology [1,3]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th, ed.)	Other
	ICP-Mass spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Differential Pulse Anodic Stripping Voltammetry.					Method 1001 [15]
15. Magnesium	Atomic Absorption		D511–93 B	3111 B		
	ICP	200.7 [2]		3120 B	3120 B	
	Complexation Titrimetric Methods.		D511–93 A	3500–Mg E	3500–Mg B	
16. Mercury	Manual, Cold Vapor	245.1 [2]	D3223–97	3112 B		
	Automated, Cold Vapor	245.2 [1]				
	ICP-Mass Spectrometry	200.8 [2]				
17. Nickel	Inductively Coupled Plasma	200.7 [2]		3120 B	3120 B	
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Direct			3111 B		
	Atomic Absorption; Furnace			3113 B		
18. Nitrate	Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3– F	4500–NO_3– F	
	Ion Selective Electrode			4500–NO_3– D	4500–NO_3– D	601 [7]
	Manual Cadmium Reduction		D3867–90B	4500–NO_3– E	4500–NO_3– E	
19. Nitrite	Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
	Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3– F	4500– NO_3– F	
	Manual Cadmium Reduction		D3867–90B	4500–NO_3– E	4500–NO_3– E	
	Spectrophotometric			4500–NO_2– B	4500–NO_2– B	
20. Ortho-phosphate [12].	Colorimetric, Automated, Ascorbic Acid.	365.1 [6]		4500–P F	4500–P F	
	Colorimetric, ascorbic acid, single reagent.		D515–88A	4500–P E	4500–P E	
	Colorimetric Phosphomolybdate.					[5] I–1601–85
	Automated-segmented Flow					[5] I–2601–90
	Automated Discrete					[5] I–2598–85
	Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	
21. pH	Electrometric	150.1 [1]	D1293–95	4500–H^+ B	4500–H+ B	
		150.2 [1]				
22. Selenium	Hydride-Atomic Absorption		D3859–98A	3114 B		
	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				
	Atomic Absorption; Furnace		D3859–98B	3113 B		
23. Silica	Colorimetric, Molybdate Blue;					[5] I–1700–85
	Automated-segmented Flow					[5] I–2700–85
	Colorimetric		D859–94			
	Molybdosilicate			4500–Si D	4500-SiO_2 C	
	Heteropoly blue			4500–Si E	4500–SiO_2 D	
	Automated for Molybdate-reactive Silica.			4500–Si F	4500–SiO_2 E	
	Inductively Coupled Plasma	200.7 [2]		3120 B	3120 B	
24. Sodium	Inductively Coupled Plasma	200.7 [2]				
	Atomic Absorption; Direct Aspiration.			3111 B		
25. Temperature	Thermometric			2550	2550	
26. Thallium	ICP-Mass Spectrometry	200.8 [2]				
	Atomic Absorption; Platform	200.9 [2]				

[1] ''Methods for Chemical Analysis of Water and Wastes'', EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, or 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards,* 1994, Vol. 11.01. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water'', July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,'' August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, ''Analytical Method For Determination of Asbestos Fibers in Water'', EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] 10 Method 100.2, ''Determination of Asbestos Structure Over 10-μm In Length In Drinking Water'', EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater'', December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater'', February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 μL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 8053.

4. Section 141.24 is amended by revising the 11th, 12th and last sentences in paragraph (e)(1), before the Table, to read as follows:

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) * * *

(1) * * * Method 6651 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, (18th Edition Supplement) (1994), or with the 19th edition (1995) or 20th edition (1998) of Standard Methods for the Examination of Water and Wastewater; any of these three editions may be used. * * * ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards* (1999), Vol. 11.02, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993.

* * * * *

5. Section 141.25 is amended by revising the Table in paragraph (a) to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally occurring:										
Gross alpha[11] and beta.	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–76		
Gross alpha[11].	Co-precipitation	.....		00–02		7110 C				
Radium 226.	Radon emanation,	903.1	p 16	Ra–04	p 19	7500–Ra C	D 3454–97	R–1141–76	Ra–04	N.Y.[9]
	Radiochemical	903.0	p 13	Ra–03		304, 305, 7500–Ra B	D 2460–97	R–1140–76		
Radium 228.	Radiochemical	904.0	p 24	Ra–05	p 19	7500–Ra D		R–1142–76		N.Y.[9]
	.....	.....								N.J.[10]
Uranium[12]	Radiochemical	908.0				7500–U B				
	Fluorometric	908.1				7500–U C (17th Ed.)	D2907–97	R–1180–76	U–04	
	.....	.....						R–1181–76		
	Alpha spectrometry	.....		00–07	p 33	7500–U C (18th, 19th or 20th Ed	D 3972–97	R–1182–76	U–02	
	Laser Phosphorimetry	.....					D 5174–97			
Man-made:										
Radioactive cesium.	Radiochemical	901.0	p 4			7500–Cs B	D 2459–72	R–1111–76		
	Gamma ray spectrometry.	901.1			p 92	7120	D 3649–91	R–1110–76	4.5.2.3	
Radioactive iodine.	Radiochemical	902.0	p 6			7500–I B				
	.....	.....	p 9			7500–I C				
	Gamma ray	.....				7500–I D	D 3649–91			
	spectrometry	901.1			p 92	7120	D 4785–93		4.5.2.3	
Radioactive	Radiochemical	905.0	p 29	Sr–04	p. 65	303, 7500–Sr B		R–1160–76	Sr–01	
Strontium 89, 90.	.....	.....							Sr–02	

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Tritium	Liquid scintillation	906.0	p 34	H–02	p. 87	306, 7500–3H B	D 4107–91	R–1171–76		
Gamma emitters.	Gamma ray	901.1			p 92	7120	D 3649–91	R–1110–76	Ga–01–R	
	Spectrometry	902.0				7500–Cs B	D 4785–93			
	.....	901.0				7500–I B				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] ''Prescribed Procedures for the Measurement of Radioactivity in Drinking Water'', EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008(revised), March 1976. Available NTIS, ibid. PB 253258.

[3] ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December, 1987. Available NTIS, ibid. PB 84–215581.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] ''Standard Methods for the Examination of Water and Wastewater'', 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7110C, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition.

[6] *Annual Book of ASTM Standards,* Vol. 11.02, 1999; American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual'', 28th (1997) or 27th (1990) Editions, Volume I and Volume II; either edition may be used. In the 27th Edition Method Ra-04 is listed as Ra-05 and Method Ga-01–R is listed as Sect. 4.5.4.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] ''Determination of Ra-226 and Ra-228 (Ra-02)'', January 1980, Revised June 1982. Available at Radiological Sciences Institute for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] ''Determination of Radium 228 in Drinking Water'', August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] In uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ration of U–234 and U–238 that is characteristic of naturally occurring uranium..

6. Section 141.74 is amended by revising the footnote 1 to the Table in paragraph (a)(1) and by revising the first three sentences of paragraph (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

[1] Except where noted, all methods refer to Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. The cited methods published in any of these three editions may be used.

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. Except for the method for ozone residuals, the disinfectant residual methods are contained in the 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998; the cited methods published in any of these three editions may be used. The ozone method, 4500–O_3 B, is contained in both the 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995; either edition may be used. * * *

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for Part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.4 is amended by revising the Table in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

Contaminant	EPA	ASTM [3]	SM [4] 18th and 19th ed.	SM [4] 20th ed.	Other
1. Aluminum	[2] 200.7		3120 B	3120 B	
	[2] 200.8		3113 B		
	[2] 200.9		3111 D		
2. Chloride	[1] 300.0	D4327–97	4110 B	4110 B	
	.....		4500–Cl^- D	4500–Cl^- D	
	.....	D512–89B	4500–Cl^- B	4500–Cl^- B	
3. Color	.....		2120 B	2120 B	
4. Foaming Agents	.....		5540 C	5540 C	
5. Iron	[2] 200.7		3120 B	3120 B	

Contaminant	EPA	ASTM [3]	SM [4] 18th and 19th ed.	SM [4] 20th ed.	Other
	[2] 200.9		3111 B		
	.....		3113 B		
6. Manganese	[2] 200.7		3120 B	3120 B	
	[2] 200.8		3111 B		
	[2] 200.9		3113 B		
7. Odor	.....		2150 B	2150 B	
8. Silver	[2] 200.7		3120 B	3120 B	[5] I–3720–85
	[2] 200.8		3111 B		
	[2] 200.9		3113 B		
9. Sulfate	[1] 300.0	D4327–97	4110 B	4110 B	
	[1] 375.2		4500–SO_4^{2-} F	4500–SO_4^{2-} F	
	.....		4500–SO_4^{2-} C, D	4500–SO_4^{2-} C, D	
	.....	D516–90	4500–SO_4^{2-} E	4500–SO_4^{2-} E	
10. Total Dissolved Solids	.....		2540 C	2540 C	
11. Zinc	[2] 200.7		3120 B	3120 B	
	[2] 200.8		3111 B		

[1] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, or 1999, Vols. 11.01 and 11.02, American Society for Testing and Materials; any year containing the cited version of the method may be used. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, and 3113 B in the 20th edition may not be used.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[FR Doc. 01–178 Filed 1–12–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411, 413, and 489

[HCFA–1112–CN]

RIN 0938–AJ93

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on July 31, 2000 entitled, ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.''

EFFECTIVE DATE: This correction is effective October 1, 2000, except for certain wage index corrections that are effective December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Bill Ullman (410) 786–5667 or Susan Burris (410) 786–6655.

SUPPLEMENTARY INFORMATION:

Background

In the July 31, 2000 final rule entitled, ''Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities'' (FR Doc. 00–19004, July 31, 2000), there were several technical errors in the preamble.

In the first column of Tables 3 through 6 of the preamble there was a typographical error. We are correcting the heading of the column from ''RUG IV category'' to ''RUG III category.''

We are also correcting several SNF PPS wage index values as published in Tables 7 and 8. Specifically, effective October 1, 2000, in Table 7, the wage index value for the Allentown-Bethlehem-Easton, PA MSA (area 0240) is corrected from 1.0040 to 0.9925 and the wage index value for the Kansas City, KS–MO MSA (area 3760) is corrected from 0.9498 to 0.9509.

Effective December 1, 2000, in Table 7, the wage index value for the Alexandria, LA MSA (area 0220) is corrected from 0.8151 to 0.8123, the wage index value for the Kansas City, KS–MO MSA (area 3760) is corrected again from 0.9509 (as corrected in the previous paragraph) to 0.9527, and, in Table 8, the wage index value for rural LA (area 19) is corrected from 0.7668 to 0.7681.

In accordance with our longstanding policies, these technical and tabulation errors are being corrected prospectively, effective on the dates noted above. This correction notice conforms the published SNF PPS wage index values to the prospectively revised values.

We are also taking this opportunity to provide a correction regarding the applicable time period to which a special market basket inflation factor is to be applied for certain providers that participated in the Multistate Nursing Home Case-Mix and Quality Demonstration (NHCMQD), the demonstration project that served as the forerunner to the national skilled nursing facility (SNF) prospective payment system (PPS). In the May 12, 1998 SNF PPS interim final rule (63 FR 26288), we explained that for those providers that received payment under the NHCMQD during a cost reporting period that began in calendar year 1997, we derived a special market basket index inflation factor of 1.031532. We used this factor to adjust the 1997 costs to the midpoint of the rate setting period in calculating their facility-specific rate. The May 1998 interim final rule indicated that the initial rate setting period (which applied to those providers beginning their *first* cost reporting period under the SNF PPS) encompassed the 15-month period from July 1, 1998, to September 30, 1999.

Under the statute's phased transition from facility-specific to full Federal rates, this inflation factor was to be successively updated for the second and third cost reporting periods under the SNF PPS. However, for demonstration providers beginning their *second* cost reporting period under the SNF PPS, the

July 30, 1999 SNF PPS update notice (64 FR 41697) inadvertently included the same inflation factor of 1.031532 that had been displayed for the first cost reporting period in the May 1998 interim final rule, along with the same time period of July 1, 1998, to September 30, 1999. Although a subsequent correction notice published in the **Federal Register** on October 5, 1999 (64 FR 54030) provided the correct inflation factor of 1.062244 for the second cost reporting period, it did not make a similar correction to the applicable time period.

Further, while the July 2000 final rule (65 FR 46787) did update both the inflation factor (1.105788) and the applicable time period (October 1, 2000, to September 30, 2001) for these demonstration providers, the latter change failed to reflect that it is possible for such a provider to begin its *third* cost reporting period under the SNF PPS as early as July 1, 2000. Accordingly, we are hereby correcting the start date for the demonstration providers for the applicable time period that was displayed in the 2000 final rule, from October 1, 2000, to July 1, 2000.

In addition, there was an error in the Regulatory Impact Analysis, section VI of the preamble, that resulted in two columns of incorrect figures displayed in the impact analysis table. Based on the correct percent changes in the two columns, some dollar figures and percentages mentioned throughout the preamble are also in error.

Specifically, on pages 46793 and 46794, column 3, we referenced $3.1 billion as the aggregate increase in payments associated with this final rule; however, we made a technical error in our calculation and the correct number is $2.6 billion. Additionally, in this section (page 46795, column 3), we made another technical error in our calculation that the payments will increase by 21.8 percent. The correct figure is 18.3 percent.

Accordingly, we are reprinting Table 11 of the preamble (64 FR 46795), entitled ''Projected Impact of FY 2001 Update to the SNF PPS,'' with the corrected figures displayed in the last two columns of the table and a corrected figure for the total number of facilities. Further, we note that Table 11 presents the projected effects of the policy changes in the SNF PPS from FY 2000 to FY 2001, as well as statutory changes effective for FY 2001 for SNFs. As such, these corrections do not represent any changes to the policies set forth in the final rule.

The corrections appear in this document under the heading ''Correction of Errors.'' The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on July 31, 2000, that is, as of October 1, 2000, except for those wage index value corrections that we specifically noted to be effective as of December 1, 2000.

Correction of Errors

In FR Doc. 00–19004 of July 31, 2000 (64 FR 46770), we are making the following corrections:

Corrections to Preamble

1. In the first column of Table 3 (on pages 46775–76), Table 4 (on pages 46776–77), Table 5 (on pages 46777–78), and Table 6 (on page 46778), the column heading is revised to read ''RUG III category''.

2. On page 46779, in column 2, the entry of ''0.8151'' for Alexandria, LA, under ''Wage Index for Urban Areas'' is revised by adding ''0.8123 (effective December 1, 2000)''.

3. On page 46779, in column 3, the entry of ''1.0040'' for Allentown-Bethlehem-Easton, PA, under ''Wage Index for Urban Areas'' is revised to read ''0.9925''.

4. On page 46782, in column 2, the entry of ''0.9498'' for Kansas City, KS–MO, under ''Wage Index for Urban Areas'' is revised to read ''0.9509''.

5. On page 46782, in column 2, the revised entry of ''0.9509'' for Kansas City KS–MO, under ''Wage Index for Urban Areas'' is further revised by adding ''0.9527 (effective December 1, 2000)''.

6. On page 46785, in column 3, the entry of ''0.7668'' for Louisiana, under ''Wage Index for Rural Areas'' is revised by adding ''0.7681 (effective December 1, 2000)''.

7. On page 46787, in column 2, first full paragraph, the last sentence is revised to read: ''In addition, we derive a special market basket inflation factor, which is 1.105788, to adjust the 1997 costs to the midpoint of the rate setting period (July 1, 2000 to September 30, 2001.)'

8. On page 46793, in column 3, section VI, Regulatory Impact Analysis, paragraph 2, the third sentence is revised to read: ''This final rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $2.6 billion in FY 2001.''

9. On page 46794, in column 3, first full paragraph, the first sentence is revised to read: ''As stated previously in this rule, the aggregate increase in payments associated with this final rule is estimated to be $2.6 billion.''

10. On page 46795, in column 3, first full paragraph, the third sentence is revised to read: ''It is assumed that payments will increase by 18.3 percent in total, assuming facilities do not change their care delivery and billing practices in response.''

11. Table 11 (Projected Impact of FY 2001 Update to the SNF PPS) is corrected as set forth below.

TABLE 11.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS

	Number of facilities	Transition to Federal rates (percent)	Add on to Federal rates (percent)	Update change (percent)	Wage index change (percent)	20 (percent) add on	Total FY 2001 change (percent)
Total	9037	4.2	3.5	2.3	0.0	7.2	18.3
Urban	6300	3.6	3.5	2.3	−0.1	7.1	17.4
Rural	2737	7.1	3.7	2.2	0.8	7.7	23.2
Hospital based urban	683	−4.5	3.0	2.4	0.0	6.8	7.6
Freestanding urban	5617	5.1	3.6	2.3	−0.1	7.2	19.3
Hospital based rural	533	2.0	3.4	2.3	0.9	8.7	18.3
Freestanding rural	2204	8.2	3.7	2.2	0.7	7.5	24.1
Urban by region:							
New England	630	10.5	3.8	2.2	−0.8	7.8	25.4
Middle Atlantic	877	14.3	3.8	2.2	−0.3	9.0	31.8
South Atlantic	959	−0.4	3.3	2.3	−0.4	6.2	11.3
East North Central	1232	6.1	3.6	2.2	0.4	7.0	20.7

TABLE 11.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS—Continued

	Number of facilities	Transition to Federal rates (percent)	Add on to Federal rates (percent)	Update change (percent)	Wage index change (percent)	20 (percent) add on	Total FY 2001 change (percent)
East South Central	212	1.9	3.5	2.3	−0.7	6.9	14.5
West North Central	469	3.6	3.5	2.3	0.4	6.7	17.5
West South Central	519	−5.2	3.0	2.4	1.0	6.3	7.3
Mountain	303	−4.0	3.1	2.4	0.0	4.8	6.2
Pacific	1070	−2.3	3.2	2.4	−0.5	6.9	9.8
Rural by region:							
New England	88	14.4	3.9	2.2	−0.9	8.4	30.5
Middle Atlantic	144	13.1	3.9	2.2	0.0	9.0	30.9
South Atlantic	373	5.3	3.6	2.2	1.1	8.0	21.7
East North Central	561	9.2	3.7	2.2	1.0	7.4	25.5
East South Central	255	4.2	3.6	2.3	0.6	8.8	20.9
West North Central	581	11.1	3.7	2.2	0.8	8.3	28.5
West South Central	354	1.2	3.4	2.3	1.1	6.9	15.7
Mountain	204	3.3	3.5	2.3	0.7	6.4	17.2
Pacific	151	3.2	3.5	2.3	0.3	6.3	16.5

(**Authority:** Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 2, 2001.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 01–1187 Filed 1–12–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–192; FCC 00–408]

Procedures for Reviewing Requests for Relief from State and Local Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses the issues raised in a previous Commission Notice of Proposed Rule Making regarding its review of requests for relief from impermissible State and local regulation of personal wireless service facilities regarding environmental effects of radiofrequency (RF) emissions. We establish that such requests under the Communications Act of 1934, as amended, shall be filed as petitions for declaratory ruling. Further, we establish certain required and recommended procedures regarding the service of pleadings and comment periods in such proceedings. The procedures adopted will facilitate the prompt resolution of such while ensuring that State and local governments have an opportunity to respond to issues raised in the context of these proceedings.

DATES: The rule change set forth in this document contains an information collection requirement that has not yet been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes. Comments from the public, OMB, and other agencies on the information collections contained in this document are due March 19, 2001.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau). For additional information concerning the information collection contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order in WT Docket No. 97–192 (the ''R&O''), FCC 00–408, adopted November 13, 2000 and released November 17, 2000. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, DC 20554. The full text of this R&O is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00408.doc.*

Paperwork Reduction Act

This R&O contains a new information collection. Specifically, the Report and Order amends Note 1 to paragraph (a) of 47 CFR .1206 of the Commission's rules so that the expanded service requirements set forth in that note apply to petitions filed pursuant to 47 U.S.C. 332(c)(7)(B)(v) (i.e., petitions for relief from impermissible State and local regulation of personal wireless service facilities on the basis of RF emissions). Thus, petitioners seeking relief under 47 U.S.C. 332(c)(7)(B)(v) must serve a copy of such petitions on those State and local governments that are the subject of the petitions as well as on those State and local governments otherwise specifically identified in the petitions whose actions petitioners argue are inconsistent with federal law.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due March 19, 2001. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

All comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

OMB Control Number: 3060–XXXX.

Title: Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934, *Report and Order* (Preemption of State and Local Government Regulation of Tower Siting on the Basis of the Environmental Effect of Radiofrequency Emissions).

Form No.: NA.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions; state and/or local or tribal governments.

Number of Respondents: 10.

Estimated Time per Response: .5 hr.

Total Annual Burden: 5 hrs.

Total Annual Costs: $100.

Needs and Uses: These procedures will ensure that petitions seeking relief under 47 U.S.C. 332(c)(7)(B)(v) will be resolved efficiently, with an opportunity for all interested parties to participate.

Synopsis of Report and Order

The Report and Order (''R&O'') addresses the issues raised in the RF *Procedures NPRM,* 62 FR 48034, regarding the Commission's review of requests for relief from impermissible State and local regulation of personal wireless service facilities based on the environmental effects of radiofrequency (RF) emissions. Specifically, the R&O provides that such requests under 47 U.S.C. 332(c)(7)(B)(v) shall be filed as petitions for declaratory ruling, and establishes certain required and recommended procedures regarding the service of pleadings and comment periods in such proceedings. The R&O also concludes that the other issues raised in the *RF Procedures NPRM* are best addressed through case-by-case adjudication. In particular, the R&O notes the Commission's expectation that the recently-adopted *Local Official's Guide* will facilitate the common sense resolution of disputes regarding demonstrations of compliance with the Commission's RF emissions rules, without resort to litigation or other formal dispute resolution.

Discussion

The R&O provides that requests for relief from the Commission under 47 U.S.C. 332(c)(7)(B)(v) shall be filed as petitions for declaratory ruling pursuant to 47 CFR 1.2 of the Commission's rules. In addition, the R&O concludes that such petitions shall be subject to the Commission's procedures applicable to petitions for declaratory ruling, with the exception of the pleading cycle guidelines and service rules set forth as follows. The pleading cycle guidelines set forth in the *Section 253 Procedures Public Notice* are equally appropriate for petitions for declaratory ruling that seek relief under 47 U.S.C. 332(c)(7)(B)(v). Specifically, the R&O anticipates that the pleading cycle for petitions for declaratory ruling that seek relief under 47 U.S.C. 332(c)(7)(B)(v) will be approximately 30 days for oppositions and approximately 15 days for replies. The specific pleading cycle for each petition will be established by the Wireless Telecommunications Bureau (Bureau) by public notice, and may vary from the approximate timeframe listed above if the Bureau finds that variation is appropriate.

The R&O also finds that petitions for declaratory ruling seeking relief under 47 U.S.C. 332(c)(7)(B)(v) are similar to petitions seeking Commission preemption of State or local government authority, and should be subject to the *Ex Parte Order's* expanded service rules referenced above. Accordingly, the R&O amends the expanded service requirements in the ex parte rules to include petitioners seeking relief under 47 U.S.C. 332(c)(7)(B)(v). Thus, petitioners seeking relief under 47 U.S.C. 332(c)(7)(B)(v) must serve a copy of such petitions not only on those State and local governments that are the subject of the petitions, but also on those State and local governments otherwise specifically identified in the petitions whose actions petitioners argue are inconsistent with federal law.

In addition, the R&O recommends that, if a petition involves a local statute, regulation, ordinance or legal requirement, the petitioner should serve the appropriate state entity, in addition to the appropriate local entity. The R&O also recommends that, subsequent to the filing and service of the initial petition, each party, including the petitioner and each respondent State or local government entity, should serve all other parties with a copy of its pleadings and any filing made pursuant to the *Commission's ex parte rules.*

The R&O finds that these procedural guidelines, in combination with the *Ex Parte Order's* expanded service rules and other Commission rules generally applicable to petitions for declaratory ruling, will facilitate the prompt resolution of petitions seeking relief from the Commission under 47 U.S.C. 332(c)(7)(B)(v), while ensuring that State and local governments have an opportunity to respond to allegations raised against them in the context of these proceedings.

The R&O also concludes that the other issues raised in the *RF Procedures NPRM* are best addressed through case-by-case adjudication. In particular, with respect to requirements related to demonstrating compliance with the Commission's RF emissions rules, the R&O notes the Commission's expectation that the *Local Official's Guide* will facilitate voluntary resolution of most disputes regarding this issue. With respect to the other issues, the R&O finds that a rulemaking is unnecessary in light of the relatively low level of controversy and the complexity of the issues.

Final Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (RFA),[1] the RF Procedures NPRM incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the proposed rules pursuant to 5 U.S.C. 605. No comments were filed on the IRFA. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless the Commission certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et Seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

established by the Small Business Administration (SBA). The Commission believes, as discussed below, that the rule adopted in this proceeding will not have a significant economic impact on a substantial number of small entities.

The Commission is making one rule change in this Report and Order. Specifically, the Commission amends Note 1 to paragraph (a) of 47 C.F.R. 1.1206 of its rules so that the expanded service requirements set forth in that note apply to petitions filed pursuant to 47 U.S.C. 332(c)(7)(B)(v) (i.e., petitions for relief from impermissible State and local regulation of personal wireless service facilities on the basis of RF emissions). Thus, petitioners seeking relief under 47 U.S.C. 332(c)(7)(B)(v) must serve a copy of such petitions on those State and local governments that are the subject of the petitions as well as on those State and local governments otherwise specifically identified in the petitions whose actions petitioners argue are inconsistent with federal law. Given that the Commission has received only one petition for relief under 47 U.S.C. 332(c)(7)(B)(v), we do not anticipate that numerous State and local governments will be the subject of such petitions or identified in such petitions. Thus, we do not expect that the service requirement adopted in this Report and Order will impose a significant burden of cost and time on petitioners, including petitioners that are small entities. We believe that this service requirement will facilitate the efficient resolution of petitions seeking relief under 47 U.S.C. 332(c)(7)(B)(v). Moreover, we believe that this requirement will ensure that State and local governments, including those governments that are small entities, have an opportunity to participate in proceedings under 47 U.S.C. 332(c)(7)(B)(v).

Accordingly, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996, that the rule adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and a summary will be published in the **Federal Register**

Report to Congress

The Commission will send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order (or summary thereof) and the Final Regulatory Flexibility Certification will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Accordingly, pursuant to the authority of Sections 4(i), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(c)(7), it is ordered that this Report and Order is hereby adopted.

The rule changes set forth in this Report and Order contain an information collection requirement that has not yet been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes.

The motion of the City of Fountain, Colorado, to consider late-filed comments is granted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications, Permit-but-disclose proceedings.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

Rule Change

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURES

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1206, Note 1 to Paragraph(A) is revised to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

Note 1 to Paragraph (A): In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority and petitions for relief under 47 U.S.C. 332(c)(7)(B)(v), the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

* * * * *

[FR Doc. 01–1086 Filed 1–12–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 122200B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 2001

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2001. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and to promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 2001, through 2400 hours, A.l.t., June 30, 2001. Comments on this action must be

received no later than 4:30 p.m., A.l.t., February 15, 2001.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator), is promulgating bycatch rate standards for the first half of 2001 effective from January 20, 2001, through June 30, 2001.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 2000 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1996–2000. Based on this and other information presented here, the Council recommended halibut and red king crab bycatch rate standards for the first half of 2001. These standards are unchanged from those specified for the past 5 years except for the first quarter BSAI bottom pollock fishery. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2001 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2001 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock:	
Qt 1	5.0
Qt 2	5.0
BSAI Yellowfin sole:	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl:	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl:	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole:	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl:	
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The BSAI pollock combined A/B season currently begins January 20 through June 10. In 2000, the inshore and offshore component fisheries for pollock ended 9 to 12 weeks prior to June 10, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until June 10, the start of the pollock combined C/D season. Also, the community development quota (CDQ) pollock fishery ended 9 weeks before the end of the combined A/B season and did not resume until just prior to July 1. As in past years, the directed fishing allowances specified for the 2001 pollock combined A/B season likely will be reached before the end of the combined A/B season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since January 1999, nonpelagic trawl gear has been allocated zero mt of the non-CDQ BSAI pollock total allowable catch. In May 2000, NMFS permanently prohibited the use of nonpelagic trawl gear in the BSAI non-CDQ directed pollock fishery (§ 679.24(b)(4)). On June 15, 2000, the Pacific halibut and crab PSC limits and associated bycatch allowances for the BSAI trawl fisheries were reduced under regulations prohibiting the use of nonpelagic trawl gear in the BSAI non-CDQ directed pollock fishery (65 FR 31105, May 16,

2000). Assignment to a fishery for purposes of the vessel incentive program is based on catch composition instead of gear type. A vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2). The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery and the bycatch rates are lower. The average halibut bycatch rate for the 2000 first and second calendar quarter fisheries was equal to 0.58 and 4.01 kg halibut/mt groundfish, respectively. With the prohibition on the use of nonpelagic trawl gear, the bycatch rates will likely remain low. It is recommended that the halibut bycatch rate standard for the first quarter BSAI bottom pollock fishery be reduced from 7.5 to 5 kg halibut/mt groundfish and the halibut bycatch rate standard for the second quarter remain at 5 kg halibut/mt groundfish.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 2001 allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2000 showed an average bycatch rate of 0.02 and 0.17 kg halibut/mt of groundfish, respectively. These rates are significantly lower than in past years. The Council and NMFS have presumed that a continued bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue a bycatch rate standard that represents an acceptable level of halibut bycatch in this fishery and will encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

For the ''other trawl'' fisheries, the Council supported a 30-kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40-kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2000 BSAI ''other trawl'' fishery show first and second quarter halibut bycatch rates of 8.11 and 20.77 kg halibut/mt of groundfish, respectively. Observer data collected from the 2000 GOA ''other trawl'' fishery show first and second quarter halibut bycatch rates of 22.77 and 54.44 kg halibut/mt of groundfish, respectively.

With the exception of the GOA second quarter ''other trawl'' fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI ''other trawl'' fisheries have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the ''other trawl'' fisheries, including the second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards would provide some leniency to those vessel operators who choose to use large-mesh trawl gear or other devices as a means to reduce groundfish discard amounts, or who are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 during the first and second quarters of 2000 averaged 0.23 and 0.45 crab/mt of groundfish, respectively. Although these rates are lower than the standards, these rates are significantly higher than bycatch rates experienced in similar quarters in previous years. The average bycatch rates of red king crab experienced in the ''other trawl'' fishery during the first and second quarter of 2000 were 0.22 and 0.32 crab/mt groundfish, respectively. The low 2000 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 2000, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 74,000 crab, considerably less than the 97,000-red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2001 red king crab bycatch in Zone 1 will be similar to 2000 because the crab bycatch reduction measures and the bycatch limit of 97,000 crab will remain the same.

In spite of anticipated 2001 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended that the red king crab bycatch rate standards be maintained at these levels. These levels continue to represent acceptable rates of bycatch in these fisheries and provide some leniency to those vessel operators who choose to use large-mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2001 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2001 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 27;

Month 2: January 28 through February 24;

Month 3: February 25 through March 31;

Month 4: April 1 through May 5;

Month 5: May 6 through June 2;

Month 6: June 3 through June 30;

Month 7: July 1 through July 28;

Month 8: July 29 through September 1;

Month 9: September 2 through September 29;

Month 10: September 30 through October 27;

Month 11: October 28 through December 1; and

Month 12: December 2 through December 31.

Classification

NMFS finds that the prevention of excessive prohibited species bycatch rates constitutes good cause to waive the requirement for prior notice and comment period pursuant to 5 U.S.C. 553(b)(B) as such procedures are contrary to the public interest. Because the halibut and red king crab bycatch rate standards for the first half of 2001 must be effective by January 20, 2001, when the Alaska groundfish trawl fishing season opens, NMFS finds for good cause that the implementation of

this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: January 9, 2001.

Clarence Pautzke,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–1213 Filed 1–12–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 10
Tuesday, January 16, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–33]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1999–2000 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations to provide compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incur losses and expenses because of Karnal bunt in the 1999–2000 crop season. The payment of compensation is necessary in order to reduce the economic effect of the Karnal bunt regulations on affected wheat growers and other individuals and to help obtain cooperation from affected individuals in efforts to contain and reduce the prevalence of Karnal bunt.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 19, 2001.

ADDRESSES: Please send your comment and three copies to:

Docket No. 96–016–33, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 96–016–33.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas.

In a final rule published in the **Federal Register** and effective on June 25, 1999 (64 FR 34109–34113, Docket No. 96–016–35), the Animal and Plant Health Inspection Service (APHIS) amended the regulations by adding compensation provisions for 1997–1998 crop season wheat.[1] That final rule made compensation available for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt in the 1997–1998 crop season. These provisions are in § 301.89–15, ''Compensation for growers, handlers, and seed companies in the 1996–1997 and 1997–1998 crop seasons,'' and § 301.89–16, ''Compensation for grain storage facilities, flour millers, and National Survey participants for the 1996–1997 and 1997–1998 crop seasons.''

APHIS did not propose to provide compensation for the 1998–1999 crop season. Surveys conducted in 1999 determined that no Karnal bunt host crops harvested in 1999 in the regulated area were positive for Karnal bunt. Therefore, no growers, handlers, seed companies, owners of grain storage facilities, flour millers, or participants in the National Karnal Bunt Survey incurred losses or expenses because of Karnal bunt for the 1998–1999 crop season. We have no reason to believe the situation will be different for this crop season. However, we are proposing to establish compensation provisions for the 1999–2000 crop season so that, if Karnal bunt is detected, compensation may be provided in a timely manner to those who incur losses or expenses.

In the future, for crop seasons beyond the 1999–2000 crop season, APHIS will not propose to provide compensation for growers, handlers, or seed companies in regulated areas. These persons know they are in an area regulated for Karnal bunt at the time planting and contracting decisions are made for future crop seasons. Understanding the restrictions, growers, handlers, and seed companies can choose to alter their planting or contract decisions to avoid experiencing losses due to Karnal bunt. However, APHIS may, for crop seasons beyond the 1999–2000 crop season, propose to provide compensation for National Karnal Bunt Survey participants whose wheat or grain storage facility tests positive for Karnal bunt. We expect, however, that the proposed compensation for these persons would be limited to one crop season.

We expect that any costs to growers and other entities related to the Karnal bunt program in the 1999–2000 crop season would be similar to those incurred in the 1997–1998 crop season. Therefore, we are proposing to amend the regulations to provide the same compensation for the 1999–2000 crop season as was provided in the 1997–1998 crop season.

[1] The 1997–1998 crop season is that season in which wheat was harvested in 1998. The 1999–2000 crop season is that season in which wheat is harvested in 2000.

Compensation for Growers and Handlers

Section 301.89–15 of the regulations provides compensation to growers and handlers for the loss in value of wheat seed and grain from the 1996–1997 and 1997–1998 crop seasons due to Karnal bunt. We are proposing to make these provisions apply also to growers, handlers, and seed companies in the 1999–2000 crop season.

The compensation in § 301.89–15 is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed. The compensation calculation for certified wheat seed and wheat grown with the intention of producing certified wheat seed is the same as that offered for wheat grain. Requiring that wheat seed be certified or grown with the intention of producing certified wheat seed ensures that the compensation is limited to market-ready seed and will not be paid for seed in other stages of development. Further, the compensation in § 301.89–15 is only for wheat that was tested by APHIS and found positive for Karnal bunt.

For the 1996–1997 and 1997–1998 crop seasons, § 301.89–15 provides two different levels of compensation for growers and handlers of positive wheat, depending on which of the following two sets of circumstances applies: (1) The wheat is from an area that became regulated for Karnal bunt after the 1996–1997 crop or 1997–1998 crop was planted, or for which an Emergency Action Notification (PPQ Form 523)(EAN) was issued after the 1996–1997 crop or 1997–1998 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold; or (2) the wheat is from an area that became regulated for Karnal bunt before the 1996–1997 crop or 1997–1998 crop was planted, or for which an EAN was issued before the 1996–1997 crop or 1997–1998 crop was planted, and that remained regulated or under an EAN at the time the wheat was sold. These areas are called ''areas under the first regulated crop season'' and ''previously regulated areas,'' respectively. Growers, handlers, and seed companies in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time they made their planting and many of their contracting decisions and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers, handlers, and seed companies in previously regulated areas knew they were in an area regulated for Karnal bunt at the time planting and contracting decisions were made for the 1996–1997 or 1997–1998 crop season. Understanding the restrictions, growers, handlers, and seed companies could have chosen to alter their planting or contract decisions to avoid experiencing losses due to Karnal bunt. The 1999–2000 crop season is the fifth regulated crop season for most regulated areas. The compensation provisions for areas under the first regulated crop season are in § 301.89–15(a); the compensation provisions for previously regulated areas are in § 301.89–15(b).

First Regulated Crop Season

At the present time, there are no areas that meet the first regulated crop season criteria for 1999–2000. We would consider all areas that are currently regulated to be previously regulated areas for the 1999–2000 crop season. APHIS is continuing to monitor for Karnal bunt throughout wheat producing areas in the United States. If Karnal bunt is found to exist in an area outside the currently regulated areas during the 1999–2000 crop season, APHIS will regulate that area, and if the area is under a declaration of extraordinary emergency, growers and handlers would be eligible for compensation for the loss in value of their wheat in accordance with the provisions for areas under the first regulated crop season.

Under § 301.89–15(a), growers, handlers, and seed companies in areas under the first regulated crop season criteria are eligible for compensation for 1996–1997 crop season wheat or 1997–1998 crop season wheat (as appropriate) and for wheat inventories in their possession that were unsold at the time the area became regulated. For the 1999–2000 crop season, we would likewise state that growers, handlers, and seed companies in areas under the first regulated crop season criteria are eligible for compensation for 1999–2000 crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated for Karnal bunt.

Under § 301.89–15(a)(1), growers of wheat in an area under the first regulated crop season criteria who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as follows:

- If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated for Karnal bunt, compensation will equal the contract price minus the actual price received by the grower; or
- If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated for Karnal bunt, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower.

For both situations described above, compensation for positive-testing wheat will not exceed $1.80 per bushel under any circumstances.

Under § 301.89–15(a)(2), handlers and seed companies who sell wheat grown in an area under the first regulated crop season criteria are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler or seed company but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received by the handler or seed company. However, compensation for positive-testing wheat will not exceed $1.80 per bushel under any circumstances.

Estimated market prices used in the compensation calculations described above for growers and handlers are calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices are calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed and wheat grain.

This proposal would make the provisions in § 301.89–15(a)(1) and (a)(2) apply to growers, handlers, and seed companies in the 1999–2000 crop season if they have wheat grown in areas under the first regulated crop season criteria.

Previously Regulated Areas

As discussed previously in this document, all of the areas currently listed as regulated areas in the Karnal bunt regulations, and all the areas currently regulated for Karnal bunt under EAN's, would be considered to be previously regulated areas for the 1999–2000 crop season.

Under § 301.89–15(b), growers, handlers, and seed companies in

previously regulated areas are eligible for compensation only for 1996–1997 and 1997–1998 crop season wheat. We would amend § 301.89–15(b) to state that growers, handlers, and seed companies in previously regulated areas are eligible for compensation under paragraph (b) only for 1996–1997, 1997–1998, and 1999–2000 crop season wheat.

Under § 301.89–15(b), growers who sell wheat are eligible to receive compensation only if the wheat was tested by APHIS and found positive for Karnal bunt prior to sale, or was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat. Handlers and seed companies who sell wheat are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase but was tested by APHIS and found positive for Karnal bunt after purchase, as long as the price to be paid is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive-testing wheat. This proposal would make this same compensation available to growers, handlers, and seed companies in the 1999–2000 crop season.

Growers, Handlers, and Seed Companies—To Claim Compensation

In past crop seasons, the Farm Service Agency (FSA) of USDA has processed Karnal bunt compensation claims from growers, handlers, and seed companies for the loss in value of their wheat. Under this proposal, FSA would continue to process such claims in the 1999–2000 crop season.

Under § 301.89–15(c), we require 1996–1997 and 1997–1998 crop season claimants to submit a number of documents in support of their claim. We would require the same documents to be submitted for 1999–2000 crop season compensation. The requirements in paragraph (c) are as follows:

Growers, handlers, and seed companies who are eligible for compensation under either the provisions for the first regulated crop season or the provisions for previously regulated areas need to provide the same documents for claiming compensation, with a few exceptions. Growers, handlers, and seed companies must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an EAN has been issued, the grower, handler, or seed company must submit a copy of the EAN. Growers, handlers, and seed companies must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of a facility weigh ticket or other verification). For compensation claims for wheat seed, a grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed. This documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed.

In addition, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under the provisions for areas in the first regulated crop season must submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under the provisions for previously regulated areas and who sold wheat that was not yet tested by APHIS must submit documentation showing that the price paid to the grower was contingent on test results (this information could appear on the receipt for the final sale of the wheat or on a contract the grower has for the wheat, if the wheat was under contract).

In addition, handlers and seed companies must provide the FSA office with a copy of the receipt for the final sale of the wheat. The handler or seed company must submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (this documentation could appear on the receipt for the purchase of the wheat from the grower or on a contract for the purchase of the wheat, if the wheat was purchased under contract).

Compensation for Grain Storage Facilities, Flour Millers, and National Survey Participants

The June 1999 final rule (Docket No. 96–016–35) also amended § 301.89–16 of the regulations. This section sets forth compensation provisions for the decontamination of grain storage facilities, heat treatment of millfeed, and losses to National Karnal Bunt Survey participants whose wheat or grain storage facility tests positive for Karnal bunt in the 1996–1997 or 1997–1998 crop season. We are proposing to amend § 301.89–16 to make its provisions also apply to the 1999–2000 crop season.

Decontamination of Grain Storage Facilities

As part of the Karnal bunt program, APHIS may require the decontamination of grain storage facilities that have been determined by APHIS to be contaminated with Karnal bunt. For the 1996–1997 and 1997–1998 crop seasons, § 301.89–16(a) provides that owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to either an EAN issued by an inspector or a letter issued by an inspector ordering decontamination of the facilities, are eligible to be compensated, on a one-time-only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility. General cleanup, repair, and refurbishment costs are excluded from compensation. Under this proposed rule, this same compensation would be available to owners of grain storage facilities in the 1999–2000 crop season.

Paragraph (a) also states that compensation payments will be issued by APHIS and sets forth provisions for claiming compensation. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered by APHIS to be decontaminated.

The records must include a copy of the EAN or the letter from an inspector ordering decontamination, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. These provisions would also apply to compensation claims in the 1999–2000 crop season.

Treatment of Millfeed

In the 1996–1997 crop season, millfeed made from wheat produced in certain regulated areas was required to be heat treated in order to help prevent the spread of Karnal bunt, and we paid

compensation to flour millers who incurred expenses for heat treatments. Under a final rule published in the **Federal Register** and effective on September 23, 1998 (63 FR 50747–50752), only millfeed resulting from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt was required to be heat treated. However, we continued to provide compensation in the 1997–1998 crop season at the same rate. In § 301.89–16, paragraph (b) provides that flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed that is required by APHIS to be heat treated are eligible to be compensated at the rate of $35.00 per short ton of millfeed. We would make this same rate of compensation available to flour millers in the 1999–2000 crop season.

Paragraph (b) provides for the 1996–1997 and 1997–1998 crop seasons that the amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). This proposed rule would make these same provisions apply to compensation claims for heat treatment of millfeed in the 1999–2000 crop season.

National Karnal Bunt Survey Participants

Each year since 1996, APHIS has conducted a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. In past crop seasons, we offered compensation to participants in the Survey whose wheat or grain storage facility tested positive for Karnal bunt, if the participant is in a State in which the Secretary of Agriculture has declared an extraordinary emergency for Karnal bunt. For the 1996–1997 and 1997–1998 crop seasons, the provisions for this compensation are in § 301.89–16(c). We are proposing to make these provisions also apply to participants in the National Karnal Bunt Survey in the 1999–2000 crop season.

For the 1996–1997 and 1997–1998 crop seasons, paragraph (c) provides that, if a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to either an EAN issued by an inspector or a letter issued by an inspector ordering decontamination of the facility. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

- The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed $1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the FSA. To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit to FSA a copy of the EAN or letter from an inspector under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility.
- The owner of the facility will be compensated on a one-time-only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under § 301.89–16(a) (discussed earlier)(up to 50 percent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in § 301.89–16(a).

Under this proposed rule, the compensation in § 301.89–16(c) described above would also be available to National Karnal Bunt Survey participants in the 1999–2000 crop season.

For the 1997–1998 crop season, claims for compensation under § § 301.89–15 and 301.89–16 had to be received by FSA or APHIS on or before October 25, 1999. This is 120 days after the date the June 1999 final rule was published in the **Federal Register**. For the 1999–2000 crop season, we would likewise require that claims for compensation be received by APHIS on or before October 25, 2000, or the date that is 120 days after a final rule for this proposal is published in the **Federal Register**, whichever is later. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before that date.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would establish compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1999–2000 crop season because of the Karnal bunt quarantine and emergency actions.

In accordance with Executive Order 12866, this analysis examines the economic effects of providing such compensation. The wheat industry within the regulated area is largely composed of businesses that can be considered ''small'' according to guidelines established by the Small Business Administration. Therefore, this analysis also fulfills the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which requires agencies to consider the economic impact of rule changes on small entities.

Upon detection of Karnal bunt in Arizona in March 1996, the U.S. Department of Agriculture (USDA) imposed Federal quarantine and emergency actions to prevent the interstate spread of the disease to other wheat producing areas in the United States. The unexpected discovery of

Karnal bunt and subsequent Federal emergency actions disrupted the production and marketing flows of wheat in the quarantined areas. It was estimated that the effect of Karnal bunt and subsequent Federal actions on the wheat industry totaled $44 million in the 1995–1996 crop season.

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the quarantine program, USDA offered compensation to mitigate certain losses incurred by growers, handlers, seed companies, and other affected persons in the areas regulated for Karnal bunt in the 1995–1996, 1996–1997, and 1997–1998 crop seasons. The payment of compensation is in recognition of the fact that, while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominately on a small segment of the affected wheat industry within the regulated areas. A final rule promulgating compensation regulations for the 1997–1998 crop season was effective and published in the **Federal Register** on June 25, 1999 (64 FR 34109–34113, Docket No. 96–016–35). The compensation proposed in this document for the 1999–2000 crop season is the same as the compensation offered in the 1997–1998 crop season.

We are proposing that growers, handlers, and seed companies would be eligible for compensation for losses in the 1999–2000 crop season due to wheat grain or seed that tested positive for Karnal bunt. Only positive-testing wheat would be eligible for compensation because of the lack of restrictions on the movement of negative-testing wheat. As in the 1997–1998 crop season, we are proposing different levels of compensation depending on whether the wheat was grown in an area under the first regulated crop season or in a previously regulated area. An area in the first regulated crop season is an area that became regulated for Karnal bunt after the 1999–2000 crop was planted. A previously regulated area is an area that became regulated for Karnal bunt before the 1999–2000 crop was planted. Currently, there are no regulated areas in the first regulated crop season.

For growers, handlers, and seed companies in previously regulated areas, the proposed compensation for positive grain or seed would be $.60 per bushel. Growers, handlers, and seed companies in the first regulated crop season would be eligible for compensation at a rate not to exceed $1.80 per bushel. These compensation rates would apply to both wheat grain and seed. The difference in compensation rates reflects the fact that affected entities in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time that they made planting and contracting decisions and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in previously regulated areas knew they were in an area regulated for Karnal bunt at the time that they made planting and contracting decisions for the 1999–2000 crop season. Given the restrictions, growers and handlers could have chosen to alter planting or contract decisions to avoid experiencing potential losses due to Karnal bunt. The proposed compensation rates are the same as those offered in the 1997–1998 crop season.

At this time, all areas that are regulated for Karnal bunt are previously regulated areas. We estimate that approximately 37,000 acres of wheat will be harvested in 2000 from the regulated areas. In the 1998–1999 crop season, no wheat grown in the regulated areas tested positive for Karnal bunt. However, if we assume that 1 percent of wheat harvested from the regulated areas will test positive for Karnal bunt in the 1999–2000 crop season, compensation for wheat grain and seed grown in currently regulated areas would total approximately $17,760 (1 percent of 37,000 acres equals 370 acres; using an estimate of 80 bushels per acre crop yield, 370 acres multiplied by 80 equals 29,600 bushels; 29,600 bushels multiplied by $.60 per bushel equals $17,760). The estimated total compensation of $17,760 would translate into a per grower average of $987, assuming that 18 growers, or 10 percent of the approximately 180 growers in the regulated area, produce wheat that tests positive for Karnal bunt. The positive-testing wheat would have a market value of approximately $133,200 in the absence of Karnal bunt.

To compare, compensation for wheat grain and seed in the 1996–1997 crop season totaled about $149,000. Approximately 122,000 acres of wheat were harvested from regulated areas in the 1996–1997 crop season, with a Karnal bunt infection rate of 0.8 percent. Compensation for wheat grain and seed in the 1997–1998 crop season is estimated to total about $1.9 million. Approximately 181,540 acres of wheat were harvested from regulated areas in the 1997–1998 crop season, with an infection rate of 3.2 percent. The increase in the amount of compensation paid in the 1997–1998 crop season resulted from wetter weather conditions, which increased the infection rate, and the fact that positive wheat was commingled with negative wheat in grain storage facilities in the certification area in Arizona before it was known that the wheat was positive.

We cannot determine at this time whether there will be areas eligible for compensation under the provisions for first regulated crop season areas in the 1999–2000 crop season. APHIS is in the process of conducting the 1999 National Karnal Bunt Survey in wheat producing areas throughout the United States. Any areas that become regulated in the 1999–2000 crop season as a result of the 1999 National Survey might be eligible for first regulated crop season compensation. During the 1998 National Survey for Karnal bunt, none of the wheat samples tested positive for Karnal bunt.

This proposed rule would also provide compensation under specific criteria for the decontamination of grain storage facilities found with positive wheat, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found to be positive for Karnal bunt. Compensation for decontamination of grain storage facilities will be on a one-time-only basis for up to 50 percent of the cost of decontamination, not to exceed $20,000. We cannot determine at this time how many, if any, grain storage facilities in currently regulated areas will store positive wheat in the 1999–2000 crop season or how many, if any, will be found to contain positive wheat during the 1999 National Survey for Karnal bunt. In the 1996–1997 crop season, compensation paid for the decontamination of grain storage facilities totaled approximately $120,000. In the 1997–1998 crop season, the compensation paid for the decontamination of grain storage facilities totaled approximately $10,700.

We are also proposing compensation for the cost of heat treating millfeed that APHIS requires to be treated, at the rate of $35.00 per short ton of millfeed. No millfeed made from wheat grown in the regulated area was required to be heat treated in the 1998–1999 crop season. Under current regulations, APHIS requires heat treatment of millfeed made from wheat that tested positive for Karnal bunt. Since little or no positive wheat is expected to be used for milling in the 1999–2000 crop season, compensation for the heat treatment of millfeed in the 1999–2000 crop season would be minimal.

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small businesses, organizations, and governmental jurisdictions. Growers

and handlers of wheat grain and seed, and wheat seed companies, would be those most affected by this proposed rule. In the 1999–2000 crop season, we estimate that there are a total of 180 wheat growers in the regulated areas: 58 in Arizona, 23 in California, 27 in New Mexico, and 72 in Texas. Most of these entities have total annual sales of less than $0.5 million, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic effects of this proposed rule would largely be on small entities.

This proposed rule is expected to have a positive economic effect on all affected entities, large and small, but few entities are likely to be affected. As indicated above, we estimate that only about 18 growers in regulated areas would produce wheat that tests positive for Karnal bunt in the 1999–2000 crop season. Compensation for the loss in value of wheat that tests positive for Karnal bunt serves to encourage compliance with testing requirements within the regulated area, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 96–016–33. Please send a copy of your comments to: (1) Docket No. 96–016–33, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require that growers, handlers, and seed companies provide certain records and documents to a local Farm Service Agency (FSA) office in order to claim compensation. Growers, handlers, and seed companies would also have to sign a Karnal Bunt Compensation Claim form (completed by an employee of FSA using the information provided by the claimant) to attest that the information on the form is accurate and to demonstrate acceptance of the compensation. This proposal would also require that owners of grain storage facilities and flour millers provide certain records and documents to an APHIS inspector in order to claim compensation. This information collection is necessary in order to verify a claimant's eligibility for compensation and to provide documentation of compensation claims and payments.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .4938 hours per response.

Respondents: Wheat growers, handlers, seed companies, owners of grain storage facilities, flour millers, FSA personnel.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 4.5.

Estimated annual number of responses: 81.

Estimated total annual burden on respondents: 40 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.89–15 would be amended by revising the section heading, the introductory text to the section, the introductory text to paragraph (a), paragraph (b), and the introductory text to paragraph (c), to read as follows:

§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1996–1997, 1997–1998, and 1999–2000 crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997, 1997–1998, and 1999–2000 crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the

wheat was grown in an area of that State that became regulated for Karnal bunt after the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1996–1997 crop season wheat, 1997–1998 crop season wheat, or 1999–2000 crop season wheat (as appropriate) and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(b) *Growers, handlers, and seed companies in previously regulated areas.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: the wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt before the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in previously regulated areas are eligible for compensation only for 1996–1997, 1997–1998, or 1999–2000 crop season wheat. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in a previously regulated area who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of $.60 per bushel of positive testing wheat.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in a previously regulated area are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid by the handler or seed company is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1996–1997 crop season had to be received by FSA on or before October 8, 1998. Claims for compensation for the 1997–1998 crop season had to be received by FSA on or before October 25, 1999. Claims for compensation for the 1999–2000 crop season must be received by FSA on or before October 25, 2000, or [*the date 120 days after the final rule is published in the* **Federal Register**], whichever is later. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

* * * * *

§ 301.89–16 [Amended]

3. Section 301.89–16 would be amended as follows:

a. In the heading, by removing the words ''1996–1997 and 1997–1998 crop seasons'' and adding the words ''1996–1997, 1997–1998, and 1999–2000 crop seasons'' in their place.

b. In the introductory text, by removing the words '' 1996–1997 and 1997–1998 crop seasons'' and adding the words ''1996–1997, 1997–1998, and 1999–2000 crop seasons'' in their place.

c. In paragraphs (a), (b), (c)(1), and (c)(2), by removing the last two sentences in each paragraph and by adding three sentences in their place to read as follows: ''Claims for compensation for the 1997–1998 crop season had to be received by APHIS on or before October 25, 1999. Claims for compensation for the 1999–2000 crop season must be received by APHIS on or before October 25, 2000, or [*the date 120 days after the final rule is published in the Federal Register*], whichever is later. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.''

Done in Washington, DC, this 9th day of January 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–1198 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that would have superseded an existing AD that currently requires repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and repetitive functional tests to determine if the backup flight idle stop system is operative. That notice of proposed rulemaking (NPRM) would also have required modification of the secondary flight idle stop system (SFISS), which would terminate the repetitive actions. That NPRM also would have removed certain airplanes from the applicability. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by changing the compliance time and certain procedures for modifying the SFISS. The actions specified by this new supplemental NPRM are intended to prevent an inoperative backup flight idle stop system.

DATES: Comments must be received by February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–66–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda Haynes, Aerospace Engineer, Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the supplemental NPRM is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, was published as an NPRM in the **Federal Register** on April 11, 2000 (65 FR 19345). That NPRM proposed to supersede AD 92–16–51, amendment 39–8355 (57 FR 40838, September 8, 1992), which is applicable to all EMBRAER Model EMB–120 series airplanes. That NPRM would have continued to require repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and repetitive functional tests to determine if the backup flight idle stop system is operative. That NPRM would have added a modification of the secondary flight idle stop system (SFISS), which would terminate the repetitive actions. That NPRM also would have removed certain airplanes from the applicability.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, EMBRAER has issued two new service bulletins that revise certain procedures that were included in earlier revisions of the service bulletins to further improve the reliability of the SFISS.

EMBRAER Service Bulletin 120–76–0018, Change No. 03, dated May 26, 2000, includes new and revised procedures for replacing the SFISS with a new system. The actions specified in this service bulletin are intended to reduce maintenance efforts by eliminating certain repetitive inspections and tests, and to provide warning lights if either of the two secondary flight idle locks become inoperable during flight. This new revision divides the text into Part I and Part II, as follows:

• Part I revises modification procedures for replacing the flight idle lock assembly with a new assembly within 4,000 flight hours.

• Part II includes modification procedures for an inspection to determine the type of bolt used to attach the power control Teleflex cable end to the nacelle secondary flight idle locking mechanism, and replacement of any hex-head bolt with a countersunk-head bolt within 400 flight hours.

EMBRAER Service Bulletin 120–76–0022, Change No. 01, dated October 9, 2000, revises the procedures in Parts I, II, and III, and adds Part IV procedures.

• Part I revises the procedure for installing the new power control bellcrank.

• Part II adds an inspection procedure and corrective action if a protruding hex-head bolt is found during the inspection.

• Part III revises the procedures for replacing the existing solenoid assembly by adding procedures for releasing the control cable end from the power control bellcrank and installing the new power control bellcrank.

• Part IV adds procedures for inspecting and replacing the bolt used to attach the power control cable end to the power control bellcrank.

Comments Received

Due consideration has been given to the comments received in response to the original NPRM:

Request To Use Later Service Information

One commenter requests changing the revision number of Embraer Service Bulletin 120–76–0018, from Revision 01 to Revision 03 to reflect the latest improvements in the new design for the SFISS. This new design provides a significant reduction in maintenance requirements and a positive warning of an inoperative condition.

The FAA concurs that the later revision of this service bulletin, which is Change No. 03, dated May 26, 2000 (rather than Revision 03), is the correct reference. Paragraph (d)(2) of the supplemental NPRM has been revised accordingly.

Request To Revise Compliance Time for Modifying the SFISS

One commenter strongly recommends incorporating the new SFISS in all

EMB–120 series airplanes that are in operation at the earliest scheduled heavy maintenance opportunity (within the next 4,000 flight hours). The commenter proposes this change because the improved SFISS specified in Service Bulletin 120–76–0018, Change No. 03, significantly reduces maintenance efforts and provides a positive warning of an inoperative condition.

The FAA partially concurs with the commenter's request to change the compliance time for modifying the SFISS in accordance with the new revision of Service Bulletin 120–76–0018. However, we have determined that the modification specified in Part I of that service bulletin must be accomplished ''within 18 months or within 4,000 flight hours after the effective date of this AD, whichever occurs earlier.'' We have also determined that the modification specified in Part II of that service bulletin must be accomplished ''within 18 months or within 400 flight hours after the effective date of this AD, whichever occurs earlier.'' In developing the appropriate compliance times, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely modification of the SFISS. In consideration of these factors, we have determined that the compliance times, as proposed in this supplemental NPRM, represent appropriate intervals in which the modifications can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. We have specified the new proposed compliance times in paragraphs (d)(2) and (d)(3) and have added paragraph (d)(4) of the supplemental NPRM accordingly.

Conclusion

The FAA has revised this supplemental NPRM to specify new requirements based on revisions to the previously referenced service bulletins and on certain comments previously described. Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 230 EMBRAER Model EMB–120 series airplanes of U.S. registry would be affected by this supplemental NPRM.

The actions that are currently required by AD 92–16–51 take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour.

Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $69,000, or $300 per airplane, per inspection cycle.

The approximate cost, at an average labor rate of $60 per work hour, for the modifications proposed by this AD are listed in Table 1, as follows:

TABLE 1.—ESTIMATED COSTS

Service bulletin	Work hours	Parts cost	Cost per airplane
120–76–0015:			
Part I	4	$4,376	$4,616
Part II	2	14,331	14,451
120–76–0018:			
Part I	50	20,000 (varies with configuration)	23,000
Part II			
120–76–0022:			
Part I	2	14,150	14,270
Part II	2	2,429	2,549
Part III	2	14,229	14,349
Part IV	1	53	113

Therefore, based on the figures included in Table 1, the cost impact of the modification proposed by this AD on U.S. operators is estimated to range from $113 to $23,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8355 (57 FR 40838, September 8, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Docket 2000–NM–66–AD. Supersedes AD 92–16–51, Amendment 39–8355.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial numbers 120004 through 120354 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inoperative backup flight idle stop system, accomplish the following:

Restatement of Certain Requirements of AD 92–16–51:

(a) For all airplanes: Within 5 days after September 23, 1992 (the effective date of AD 92–16–51, amendment 39–8355), and thereafter prior to the first flight of each day until the requirements of paragraph (d) of this AD have been accomplished, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers:

Using an appropriate light source, perform a visual check to verify that both ''FLT IDLE STOP SOL'' circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

Note 2: This check may be performed by a flight crew member.

Note 3: Instructions for installation of an inspection window can be found in EMBRAER Information Bulletin 120–076–0003, dated November 19, 1991; or EMBRAER Service Bulletin 120–076–0014, dated July 29, 1992.

(2) For airplanes on which an inspection window has not been installed on the left lateral console panel: Perform a visual inspection to verify that both ''FLT IDLE STOP SOL'' circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

(b) As a result of the check or inspection performed in accordance with paragraph (a) of this AD: If circuit breakers CB0582 and CB0583 are not closed, prior to further flight, reset them and perform the functional test specified in paragraph (c) of this AD.

(c) Within 5 days after September 23, 1992, and thereafter at intervals not to exceed 75 hours time-in-service, or immediately following any maintenance action where the power levers are moved with the airplane on jacks, until the requirements of paragraph (d) of this AD have been accomplished, conduct a functional test of the backup flight idle stop system for engine 1 and engine 2 by performing the following steps:

(1) Move both power levers to the ''MAX'' position.

(2) Turn the aircraft power select switch on.

(3) Open both ''AIR/GROUND SYSTEM'' circuit breakers CB0283 and CB0286 to simulate in-flight conditions with weight-off-wheels. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine cannot be moved below the flight idle position, even though the flight idle gate trigger on each power lever is raised.

(4) If the power lever can be moved below the flight idle position, prior to further flight, restore the backup flight idle stop system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990, and perform a functional test.

Note 4: If the power lever can be moved below flight idle, this indicates that the backup flight idle stop system is inoperative.

(5) Move both power levers to the ''MAX'' position.

(6) Close both ''AIR/GROUND SYSTEM'' circuit breakers CB0283 and CB0286. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine can be moved below the flight idle position.

(7) If either or both power levers cannot be moved below the flight idle position, prior to further flight, inspect the backup flight idle stop system and the flight idle gate system, and accomplish either paragraph (c)(7)(i) or (c)(7)(ii) of this AD, as applicable:

(i) If the backup flight idle stop system is failing to disengage with weight-on-wheels, prior to further flight, restore the system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990.

(ii) If the flight idle gate system is failing to open even though the trigger is raised, prior to further flight, repair in accordance with the EMBRAER Model EMB–120 maintenance manual.

(8) Turn the power select switch off. The functional test is completed.

New Requirements of This AD

(d) Modify the secondary flight idle stop system (SFISS), as specified by paragraph (d)(1), (d)(2), (d)(3), or (d)(4), as applicable, of this AD. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(1) For airplane serial number 120068, within 18 months or within 4,000 flight hours after the effective date of this AD, whichever occurs earlier: Modify the SFISS in accordance with Parts I and II of EMBRAER Service Bulletin 120–76–0015, Change No. 05, dated September 9, 1999.

(2) For certain airplanes listed in EMBRAER Service Bulletin 120–76–0018, Change No. 03, dated May 26, 2000, that HAVE NOT accomplished the actions specified in earlier revisions of that service bulletin: Within 18 months or within 4,000 flight hours after the effective date of this AD, whichever occurs earlier, modify the SFISS (including replacing the bolts, washers, nuts, and cotter-pins of the engine power control cable for the left and right engines with new components; replacing the flight idle lock assembly with a new assembly; and replacing certain other components with new components), in accordance with Part I of that service bulletin.

(3) For certain airplanes listed in EMBRAER Service Bulletin 120–76–0018, Change No. 03, dated May 26, 2000, that HAVE accomplished the actions specified in that service bulletin: Within 18 months or within 400 flight hours after the effective date of this AD, whichever occurs earlier, modify the SFISS (including an inspection to determine the type of bolt used to attach the power control cable end at the bellcrank in the left and right nacelles, and replacement of any protruding hex-head bolt with a new countersunk-head bolt), in accordance with Part II of that service bulletin.

Note 5: This AD references Service Bulletin 120–76–0018, Change No. 03, dated May 26, 2000, and Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999, for applicability, inspection, and modification information. In addition, this AD specifies compliance-time requirements beyond those included in the Brazilian airworthiness directive or the service information. Where there are differences between the AD and previously referenced documents, the AD prevails.

(4) For airplanes listed in EMBRAER Service Bulletin 120–76–0022, Change No. 01, dated October 9, 2000: Within 18 months or within 4,000 flight hours after the effective date of this AD, whichever occurs earlier, modify the SFISS in accordance with Part I, II, III, or IV, as applicable, of that service bulletin.

Note 6: Accomplishment of the requirements of paragraph (d) of this AD does not remove or otherwise alter the requirement to perform the repetitive (400-flight-hour) CAT 8 task checks specified by the Maintenance Review Board.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously for paragraphs (a), (b), and (c) of AD 92–16–51, are considered to be approved as alternative methods of compliance with the inspection requirements

of paragraphs (a), (b), and (c) of this AD. No alternative methods of compliance have been approved in accordance with AD 92–16–51 as terminating action for this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 8: The subject of this AD is addressed in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1239 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing the nylon straps with new straps; as applicable. This action is necessary to ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–116–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–116–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the escape ropes provided at the flight deck windows on certain Model 767 series airplanes are too short when the airplane is in a tail-tip condition [*i.e.,* airplane resting on one main landing gear (MLG), the engine on the side of the collapsed MLG, and the aft fuselage]. The length of the end of the existing ropes is approximately 10½ to 12½ feet above the ground when the airplane is in a tail-tip condition. To establish the appropriate length of an escape rope, all conditions of a collapsed landing gear must be considered to determine how high the flight deck windows will be above the ground. When the length of the 767 escape ropes was established, it was assumed that the engine on the same side of the airplane as a collapsed MLG would shear off of the wing due to the weight of the airplane. However, service experience has shown that the engines on both sides of the airplane can remain attached when an MLG collapses. If this condition were to occur, the height of the flight deck windows would be higher than originally calculated, and thus, the escape ropes at the flight deck windows would be too short if a tail-tip condition occurs. This condition, if not corrected, could prevent flight crew members from safely reaching the ground from a flight compartment window in the event of an emergency evacuation.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999, which describes procedures for removing the two existing escape ropes in the flight compartment; installing new escape ropes, bags, and placards; and replacing

the nylon straps with new straps; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 321 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 136 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,718 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $649,808, or $4,778 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–116–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flight crew members safely reach the ground from a flight compartment window in the event of an emergency evacuation, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per Boeing Alert Service Bulletin 767–25A0265, dated May 27, 1999.

(1) For all airplanes: Remove the two existing escape ropes and install new escape ropes, bags, and placards, as applicable, in the flight compartment.

(2) For airplanes having serial numbers 1 through 107 inclusive; on which Boeing Service Bulletin 767–25–0149, dated March 7, 1991 has been accomplished; or on which neither Boeing Service Bulletin 767–25–0149, dated March 7, 1991, nor 767–25A0242, dated October 31, 1996, has been accomplished: Replace the nylon straps with new straps.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1238 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require a modification involving nondestructive test inspections of the 34 fastener holes in each rear wing spar, corrective action, if necessary, and cold working of the holes to increase fatigue life of the rear spar web. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The

actions specified by the proposed AD are intended to prevent fatigue cracking, which could result in fuel leakage and reduced structural integrity of the wings.

DATES: Comments must be received by February 15, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–178–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–178–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that, during fatigue tests, cracks have been detected at some fastener holes in the lower trailing edge support angles on both wings. This cracking condition, if not corrected, could result in fuel leakage and reduced structural integrity of the wing.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–57–037, dated April 13, 2000, which describes procedures for a modification involving nondestructive test inspections of the 34 fastener holes in each rear wing spar to detect discrepancies (including cracking, scratches, or other damage, and incorrect hole size) and cold working of the holes to increase fatigue life. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–157, dated April 13, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the LFV (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the LFV would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 64 work hours per airplane to accomplish the proposed inspections and modification, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer without cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,520, or $3,840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 2000–NM–178–AD.

Applicability: Model SAAB 2000 series airplanes, certificated in any category, serial numbers –003 through –063 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage and reduced structural integrity of the wings due to fatigue cracking, accomplish the following:

Modification

(a) Except as required by paragraph (b) of this AD: Prior to the accumulation of 13,000 total flight cycles, accomplish the modification of the rear spar on both wings [including applicable nondestructive test inspections to detect discrepancies (including cracking, scratches, or other damage, and incorrect hole size) and cold working of fastener holes] in accordance with Saab Service Bulletin 2000–57–037, dated April 13, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and who will then send the requests and comments to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive 1–157, dated April 13, 2000.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1237 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. For Model F.28 Mark 0100 series airplanes, the existing AD also requires modification of the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. The proposed AD would remove the previous revision of the AFM and would require a new limitation and a new warning. This proposal is prompted by issuance of mandatory continuing airworthiness information by

a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent inadvertent deployment of the liftdumpers during approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane.

DATES: Comments must be received by February 15, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–290–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–290–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 21, 1999, the FAA issued AD 99–20–07, amendment 39–11337 (64 FR 52219, September 28, 1999), applicable to all Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, to require revising the Airplane Flight Manual (AFM) to provide the flightcrew with instructions not to arm the liftdumper system prior to commanding the landing gear to extend. For Model F.28 Mark 0100 series airplanes, the existing AD also requires modification of the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent electromagnetic interference generated by electrical wiring that runs parallel to the wheelspeed sensor wiring, which could result in inadvertent deployment of the liftdumpers during approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane.

Since Issuance of Previous Rule

Since the issuance of AD 99–20–07, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, reports another inadvertent deployment of the liftdumpers that occurred on a Fokker Model F.28 Mark 0100 series airplane. The pilot's report indicated that the flightcrew had armed the liftdumpers just after making the landing gear DOWN selection, whereupon the liftdumpers extended almost instantaneously. The RLD has issued Dutch airworthiness directive 1998–042/2, dated February 29, 2000, to ensure the continued airworthiness of these airplanes in the Netherlands. The Dutch airworthiness directive advises the flight crew not to arm the liftdumpers before the landing gear is down and locked.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–20–07 to require revising the AFM by removing the previous revision which instructed the flightcrew not to arm the liftdumper system prior to commanding the landing gear to extend and by inserting a new limitation and a new warning not to arm the liftdumpers before the landing gear is down and locked in position. For Model F.28 Mark 0100 series airplanes, the proposed AD would continue to require modification of the grounds of the shielding of the wheelspeed sensor wiring of the MGL and installation of new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the landing gear.

Cost Impact

There are approximately 123 airplanes of U.S. registry that would be affected by this proposed AD.

The modifications that are currently required by AD 99–20–07 take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $755 to $1,236 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be between $336,405 and $395,568, or between $2,735 and $3,216 per airplane.

The revision to the AFM that is proposed in this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $7,380, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11337 (64 FR 52219, September 28, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 2000–NM–290–AD. Supersedes AD 99–20–07, Amendment 39–11337.

Applicability: All Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of the liftdumper systems during the approach for landing or reduced brake pressure during low speed taxiing, and consequent reduced controllability and performance of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 99–20–07

Corrective Actions

(a) For Model F.28 Mark 0100 series airplanes having serial numbers as listed in Fokker Service Bulletin SBF100–32–067, Revision 1, dated July 6, 1998: Within 6 months after November 2, 1999 (the effective date of AD 99–20–07, amendment 39–11337), modify the grounds of the shielding of the wheelspeed sensor wiring of the main landing gear (MLG) in accordance with part 1, 2, 3, or 4 of the Accomplishment Instructions of the service bulletin, as applicable.

Note 2: Modifications accomplished prior to November 2, 1999, in accordance with Fokker Service Bulletin SBF100–32–067, dated March 12, 1993, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) For Model F.28 Mark 0100 series airplanes having serial numbers as listed in Fokker Service Bulletin SBF100–32–037, Revision 2, dated December 4, 1998: Within 12 months after November 2, 1999, install new electrical grounds for the wheelspeed sensor channel of the anti-skid control box of the MLG in accordance with part 1, 2, or 3 of the Accomplishment Instructions of the service bulletin, as applicable.

Note 3: Installations accomplished prior to November 2, 1999, in accordance with Fokker Service Bulletin SBF100–32–037, dated November 12, 1990, or Revision 1, dated November 16, 1998, are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

New Actions Required by This AD

Revision of the Airplane Flight Manual

(c) Within 10 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the FAA-approved Airplane Flight Manual (AFM) in accordance with paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this AD. This may be accomplished by inserting a copy of this AD into the appropriate sections of the AFM.

(1) Remove the following information from the Limitations section:

''LIFTDUMPER SYSTEM—DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION.''

(2) Add the following information to the Limitations section in the Miscellaneous Limitations sub-section:

''FLIGHT CONTROLS—NORMAL OPERATION OF LIFTDUMPERS: DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR IS DOWN AND LOCKED.''

(3) Remove the following information from Section 5—Normal Procedures, sub-section Approach and Landing, after the subject Approach:

''BEFORE LANDING—WARNING: DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR DOWN SELECTION. Selecting Landing Gear DOWN after arming the liftdumper system may result in inadvertent deployment of the liftdumpers, because the liftdumper arming test may be partially ineffective.''

(4) Add the following information to Section 5—Normal Procedures, sub-section Approach and Landing, after the subject Approach:

''BEFORE LANDING— WARNING: DO NOT ARM THE LIFTDUMPER SYSTEM BEFORE LANDING GEAR IS DOWN AND LOCKED.''

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Dutch airworthiness directive 1998–042/2, dated February 29, 2000.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1236 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–303–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This proposal would require repetitive detailed visual and ultrasonic inspections of the lower flange of the flaperon inboard support to find cracking, and corrective actions, if necessary. This proposal also would require a modification, which would terminate the repetitive inspections. This action is necessary to prevent fracture of the inboard support structure, which could result in an in-flight loss of the inboard flaperon, structural damage, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–303–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–303–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Flight testing of certain Boeing Model 777–200 series airplanes showed that high engine thrust conditions during takeoff cause tremendous cyclic loads on the support structure of the inboard flaperon. Based on engineering analysis, fatigue cracks of the support structure could develop at approximately 4,000 flight cycles. Such fatigue cracking could result in fracture of the inboard support structure, in-flight loss of the inboard flaperon, significant damage to the surrounding structure, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0036, dated June 24, 1999, which describes procedures for detailed visual and ultrasonic inspections of the lower flange of the flaperon inboard support to find cracking, and corrective actions if cracking is found. The corrective actions consist of accomplishment of the terminating action in Part 2 of the service bulletin. The terminating action includes, but is not limited to, a high frequency eddy current inspection to find cracks of the aft holes that attach the failsafe strap to the lower flange, oversizing of the holes if cracks are found, and installation of a failsafe strap. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions

specified in the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and This Proposed AD

While the effectivity listing of the service bulletin includes airplanes having line numbers (L/N) 2 through 9 inclusive; this proposed AD would apply to airplanes having L/N's 1 through 9 inclusive. The FAA has determined that the subject area on the airplane with L/N 1 is identical to the subject areas on the Model 777–200 series airplanes listed in the service bulletin; so the airplane with L/N 1 is also subject to the identified unsafe condition.

Although the service bulletin specifies that the manufacturer may be contacted for instructions on repair of certain conditions, this proposed AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,932 per airplane. Based on these figures, the cost impact of the terminating action proposed by this AD on U.S. operators is estimated to be $3,292 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–303–AD.

Applicability: Model 777–200 series airplanes, line numbers (L/N) 1 through 9 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the inboard support structure of the flaperon, which could result in an in-flight loss of the inboard flaperon, structural damage, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 4,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later: Do a detailed visual and an ultrasonic inspection of the lower flange of the flaperon inboard support to find cracks per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0036, dated June 24, 1999.

(1) If no cracking is found: Repeat the applicable inspections thereafter at intervals not to exceed 300 flight cycles until accomplishment of the terminating action specified in paragraph (b) of this AD.

(2) If any cracking is found, before further flight, do the terminating action required by paragraph (b) of this AD, except, where the service bulletin specifies to contact Boeing for instructions, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Terminating Action

(b) On or before the accumulation of 8,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later: Do the terminating action (a high frequency eddy current inspection to find cracks of the aft holes that attach the failsafe strap to the lower flange, oversizing of the holes if cracks are found, and installation of a failsafe strap), per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0036, dated June 24, 1999. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may

add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1235 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 807

[Docket No. 00N–1625]

Medical Devices; Rescission of Substantially Equivalent Decisions and Rescission Appeal Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations under which FDA may rescind a decision issued under the Federal Food, Drug, and Cosmetic Act (the act) that a device is substantially equivalent to a legally marketed device, and, therefore, may be marketed. In addition, under this proposal, a premarket notification (commonly known as a ''510(k)'') holder may request administrative review of a proposed rescission action. This proposed rule is being issued in order to standardize the procedures for considering rescissions.

DATES: Submit written comments by April 16, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device Amendments (Public Law 94–295) (the amendments) to the act (21 U.S.C. 301 *et seq.*) were enacted on May 28, 1976. Among other things, the amendments directed FDA to issue regulations classifying all medical devices into one of three regulatory control categories. The classification depends upon the degree of regulation necessary to provide reasonable assurance of the safety and effectiveness of the device.

Under section 513(a)(1)(A) of the act (21 U.S.C. 360c(a)(1)(A)), class I devices are subject to a comprehensive set of regulatory provisions applicable to all classes of devices, e.g., registration and listing, prohibitions against adulteration and misbranding, and good manufacturing practice requirements. A class I device is exempt from the premarket notification requirements of the act unless it is intended for a use which is of substantial importance in preventing impairment of human health, or the device presents a potential unreasonable risk of illness or injury under section 510(l) of the act (21 U.S.C. 360(l)). Class II devices are subject to special controls as well as general controls. These special controls may consist of performance standards, postmarket surveillance, patient registries, FDA guidelines, or other appropriate controls under section 513(a)(1)(B) of the act. Class III devices require premarket approval (PMA) or a completed product development protocol by FDA before they may be marketed, unless they are class III devices for which we have not called for PMA's under section 515(b) of the act (21 U.S.C. 360e(b)).

II. Premarket Notification Requirements

Section 510(k) of the act requires each person who is required to register and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use to submit a 510(k).

Throughout this proposal, we use the following terms:

1. The ''510(k) submitter.''—the person who submitted the 510(k) to the FDA.

2. The ''510(k) holder''—the person who possesses the rights to market the device that is the subject of a 510(k) substantial equivalence order. (The 510(k) submitter and the 510(k) holder may or may not be the same person.)

3. The ''510(k) holder of record''—the person whom FDA has on file as being the 510(k) holder.

The proposed rule adds these definitions to 21 CFR 807.3.

There may be instances when 510(k) ownership has changed without FDA's knowledge. In the event of a proposed rescission, FDA would provide notice to the 510(k) holder of record. FDA would attempt to notify the holder of record by registered letter. FDA would also post notice of a proposed rescission on FDA's Center for Devices and Radiological Health's (CDRH) home page on the Internet at http://www.fda.gov/cdrh/index.html. To protect the privacy of the 510(k) holder, only the proposed rescission would be listed; the factual basis and reasons for the rescission would not be posted on CDRH's home page on the Internet.

Under the 510(k) process, the 510(k) submitter may claim that its new device is substantially equivalent to a legally marketed class I or class II device or to a preamendments class III device that is not yet required to be the subject of an approved premarket approval application. If, after reviewing the 510(k), the agency determines that the device is substantially equivalent to the legally marketed device (as defined in 21 CFR 807.92(a)(3)), the agency will issue an order permitting the 510(k) submitter to market its device without the need for the more rigorous premarket approval under section 515 of the act.

The criteria the agency must use to determine substantial equivalence are in section 513(i) of the act. Section 513(i) of the act defines substantial equivalence to mean that the device has the same intended use as the predicate device and that FDA, by order, has found that the device—(i) has the same technological characteristics as the predicate device, or (ii)—(I) has different technological characteristics and the information submitted that the device is substantially equivalent to the predicate device contains information, including clinical data if deemed necessary by FDA, that the device is as safe and effective as a legally marketed device, and (II) does not raise different questions of safety and effectiveness than the legally marketed device.

The statute allows 510(k) marketing clearance only for devices that FDA determines are comparable in safety and effectiveness to a legally marketed device. New devices that are not substantially equivalent must remain in class III and meet the premarket approval requirements under section 515 of the act before they can be marketed, unless the device is reclassified under section 513(f) of the act.

III. Authority to Rescind

On October 25, 1994, the Health Industry Manufacturers Association (HIMA) submitted a petition [Docket No. 94A–0388] to FDA in which they requested that FDA issue an advisory opinion stating that the act does not provide authority for FDA to withdraw a premarket notification (510(k)) order. In the alternative, HIMA requested that, if FDA determined that it did have the authority to withdraw a premarket notification order, FDA should: (1) Refrain from rescinding such a decision without establishing procedures assuring the 510(k) holder due process rights; (2) provide the 510(k) holder an opportunity for an informal hearing under section 201(x) (formerly 201(y)) of the act (21 U.S.C. 321(x)) before issuing a rescission order; and (3) issue a regulation providing the 510(k) holder with the opportunity to request a hearing to challenge a proposed withdrawal.

On September 11, 1995, FDA issued an interim response to the HIMA petition. In this interim response, FDA said that it intended to issue a proposed rule specifying the authority for rescinding a substantial equivalence decision as well as the grounds under which such decisions can be made. The interim response also stated that, pending the completion of this rulemaking process, FDA would only rescind, or propose to rescind, substantial equivalence orders in cases involving: (1) A serious adverse risk to public health or safety, (2) data integrity or fraud, or (3) other compelling circumstances. On September 22, 1997, FDA issued a final response to the petition that restated the policy established in the interim response.

Although the act does not expressly address rescission of substantial equivalence orders, section 513(f) and (i) of the act indicate that rescission is consistent with FDA's authority under the act to allow marketing of a device under the 510(k) process only if the device is substantially equivalent to a legally marketed device.

FDA has authority under its administrative procedure regulations to reconsider the issuance of substantial equivalence orders § 10.33(a) and (h) (21 CFR 10.33(a) and (h)). Section 10.33(a) states the ''Commissioner may at any time reconsider a matter, on the Commissioner's own initiative or on the petition of an interested person.'' Section 10.33(h) states the ''Commissioner may initiate the reconsideration of all or part of a matter at any time after it has been decided or action has been taken.'' Both § 10.33(a) and (h) provide the agency with authority to reconsider and rescind an order determining a device to be substantially equivalent.

Section 10.75 (21 CFR 10.75) also provides the agency with authority for supervisory review of decisions made by an employee other than the Commissioner of Food and Drugs (the Commissioner). This internal review can be undertaken to resolve agency disputes, review policy and unusual situations affecting public interest, or as required by delegations of authority. Section 10.75 supports the agency's authority to correct the decisions that it determines were made in error by employees other than the Commissioner.

Case law also supports FDA's authority to correct inappropriate decisions even in the absence of explicit statutory or regulatory authority. In *American Therapeutics Inc.* v. *Sullivan*, 755 F. Supp. 1, 2 (D.D.C. 1990), FDA rescinded a drug approval that had been issued by mistake. The court held that, although there were no regulations or statutory provisions that expressly contemplated rescission of an approval by mistake, the agency must be given latitude to correct mistakes.

The Supreme Court has also recognized an implied authority in agencies to reconsider and rectify errors, even if the applicable statute and regulations do not expressly provide for such reconsideration. For example, in concluding that the Interstate Commerce Commission could order a refund to correct a prior error, the Supreme Court stated that ''[a]n agency, like a court, can undo what is wrongfully done by virtue of its order.'' *United Gas Improvement Co.* v. *Callery Properties, Inc.,* 382 U.S. 223, 229 (1965). See also *American Trucking Association* v. *Frisco Trans.,* 358 U.S. 133, 145 (1958) (''the presence of authority in administrative officers and tribunals to correct [inadvertent ministerial] errors has long been recognized—probably so well recognized that little discussion has ensued in the reported cases.''); *Copley* v. *Elliot,* 948 F. Supp. 586, 589 (W.D. Va. 1996) (''[i]t is generally always within the power of a government agency to correct its mistakes.'').

Other courts have similarly recognized this implied authority, *Iowa Power and Light Co.* v. *United States,* 712 F.2d 1292, 1294–97 (8th Cir. 1983) (ICC could retroactively impose higher tariff to correct legal error), cert. denied, 466 U.S. 949 (1984); *Bookman* v. *United States,* 453 F.2d 1263, 1265 (Ct. Cl. 1972) allowing agency to reconsider decisions in absence of statutory or regulatory authorization after noting general rule that ''[e]very tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgment, decree, or order'') (quoting 2 K. Davis, Administrative Law Treatise, section 18.09 (1958)).

Moreover, some courts have held that FDA has a duty to correct errors if it learns its prior position was incorrect. See *United States* v. *60 28-Capsule Bottles,*. 211 F. Supp. 207, 215 (D. N.J. 1962) (FDA has a duty to change its position with reference to the efficacy of a drug if it subsequently learns that its original position was in error); see also *Bentex Pharmaceuticals Inc.* v. *Richardson,* 463 F.2d. 363, 368 n. 17 (4th Cir. 1972) *rev'd Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1979) (noting FDA not estopped from alleging product was a ''new drug,'' even though the agency had given the opinion that similar drugs were not ''new drugs'').

IV. Bases for Proposing Rescission of a 510(k) Substantial Equivalence Decision

FDA examines a vast array of device technologies each year under the premarket notification (510(k)) process. Under the 510(k) process, each submitter has the burden of demonstrating that its device is at least as safe and effective as a legally marketed device. If FDA discovers that a premarket notification submission does not meet the criteria of substantial equivalence and the submission was cleared in error, FDA will issue a registered letter to the 510(k) holder of record proposing to rescind the order of substantial equivalence. FDA will also post notice of the proposed rescission on CDRH's home page on the Internet.

Under proposed § 807.103, FDA may propose rescission of a substantial equivalence decision if one or more of the following criteria are met. FDA believes that, if any one of these criteria is met, there is no longer reasonable assurance that the device is at least as safe and effective as a legally marketed device.

1. The premarket notification does not satisfy the criteria under § 807.100(b)(1) or (b)(2) for a determination of substantial equivalence.

2. Based on new safety or effectiveness information, the device is not substantially equivalent to a legally marketed device.

3. (i) FDA or the 510(k) holder has removed from the market, for safety and effectiveness reasons, one or more legally marketed device(s) on which the substantial equivalence determination

was based, or (ii) a court has issued a judicial order determining the legally marketed device(s), on which the substantial equivalence determination was based, to be misbranded or adulterated.

4. The premarket notification contained or was accompanied by an untrue statement of material fact.

5. The premarket notification included or should have included information about clinical studies and these clinical studies failed to comply with applicable Institutional Review Board regulations (21 CFR part 56) or informed consent regulations (21 CFR part 50) in a way that the rights or safety of human subjects were not adequately protected.

6. The premarket notification contained clinical data submitted by a clinical investigator who has been disqualified under 21 CFR 812.119.

These would be bases to rescind because information in the 510(k) is incorrect, incomplete, unreliable, or not evaluated properly by FDA in accordance with section 513(f) and (i) of the act.

V. Procedures for Rescinding a 510(k) Substantial Equivalence Order

Before issuing an order rescinding a 510(k) substantial equivalence decision, FDA would notify the 510(k) holder of record of its intent to rescind by registered mail. This notice would state the facts upon which the action is based and would notify the 510(k) holder of record of an opportunity for a hearing under part 16 (21 CFR part 16). The notice would include the time within which a hearing may be requested and the name, address, and telephone number of the FDA employee to whom any request for a hearing is to be addressed. FDA would also post notice of a proposed rescission on CDRH's home page on the internet. The Internet site will only state that a rescission of the 510(k) is proposed and information about the hearing and will not state the facts upon which the action is based. Because FDA may be unaware that ownership of a 510(k) has changed, the notification by Internet site would serve as an additional means of assuring that the current 510(k) holder has notice.

If FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, the agency may, in accordance with §§ 16.24(d), 16.60(h) and 10.19, waive, suspend, or modify any part 16 procedure or procedures stated in part 807. Ordinarily, the amount of time specified in the notice for requesting a hearing will be not less than 3 working days. FDA ordinarily would provide notice by registered mail. Under circumstances presenting the need for immediate action, FDA may, for example, attempt to contact the 510(k) holder by telephone instead of registered mail.

If a 510(k) holder fails to request a hearing within the timeframe specified by FDA in the notice of opportunity for hearing, FDA will consider the failure to request a hearing a waiver of such hearing and FDA will issue a letter rescinding the order determining substantial equivalence.

If, after a part 16 hearing is held, the agency decides to proceed with the rescission of an order determining substantial equivalence, FDA will issue to the 510(k) holder of record an order rescinding the order determining substantial equivalence. The rescission order will state each ground for rescinding the substantial equivalence determination. FDA will give the public notice of an order rescinding a determination of substantial equivalence. The notice will be placed on CDRH's home page on the Internet.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities, if a rule would have a significant economic impact on a substantial number of small entities. The proposed rule will not have a significant economic impact on a substantial number of small entities. FDA has only proposed five rescissions from 1997 through 1999 and one rescission through May 2000. FDA does not believe that this level of activity represents a significant impact on a substantial number of small entities. In addition, the rule will be applied only when the criteria for rescission are met. The agency therefore certifies that this rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by April 16, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

IX. Paperwork Reduction Act of 1995

FDA has tentatively determined that this proposed rule contains no collections of information. Therefore, clearance from the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner

of Food and Drugs, it is proposed that 21 CFR parts 16 and 807 be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding an entry for § 807.103 to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 807.103 relating to rescission of substantially equivalent orders and rescission appeal procedures.

* * * * *

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

3. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

4. Section 807.3 is amended by adding new paragraphs (t), (u), and (v) to read as follows:

§ 807.3 Definitions.

* * * * *

(t) *510(k) submitter* means the person who submitted the 510(k) to FDA.

(u) *510(k) holder* means the person who possesses the rights to market a device that is the subject of 510(k) substantial equivalence order.

(v) *510(k) holder* of record means the person FDA has on file as being the holder of the 510(k).

5. Section 807.103 is added to subpart E to read as follows:

§ 807.103 Rescission of 510(k) substantially equivalent orders and rescission appeal procedures.

(a) *Grounds for rescinding a substantially equivalent order.* FDA may issue an order rescinding a determination of substantial equivalence under this section, if FDA determines that any one of the following grounds exist:

(1) The premarket notification does not satisfy the criteria under § 807.100(b)(1) or (b)(2) for a determination of substantial equivalence.

(2) Based on new safety or effectiveness information, the device is not substantially equivalent to a legally marketed device.

(3) (i) FDA or the 510(k) holder has removed from the market, for safety and effectiveness reasons, one or more legally marketed device(s) on which the substantial equivalence determination was based, or

(ii) A court has issued a judicial order determining the legally marketed device(s) on which the substantial equivalence determination was based to be misbranded or adulterated.

(4) The premarket notification contained or was accompanied by an untrue statement of material fact.

(5) The premarket notification included or should have included information about clinical studies and these clinical studies failed to comply with applicable institutional review board regulations (part 56 of this chapter) or informed consent regulations (part 50 of this chapter) in a way that the rights or safety of human subjects were not adequately protected.

(6) The premarket notification contained clinical data submitted by a clinical investigator who has been disqualified under § 812.119 of this chapter.

(b) *Notice of proposed rescission and opportunity for a hearing.* Before issuing an order rescinding a substantial equivalence order, FDA will issue the 510(k) holder of record a notice of the agency's intent to rescind the 510(k) by registered letter, together with a notice of an opportunity for an informal hearing under part 16 of this chapter. FDA will also post notice of a proposed rescission on the FDA's Center for Devices and Radiological Health's (CDRH) home page on the Internet at http://www.fda.gov/cdrh/index.html. If FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, the agency may, in accordance with §§ 16.24(d), 16.60(h), and 10.19 of this chapter, waive, suspend, or modify any part 16 procedure and, in accordance with this section, waive, suspend, or modify any part 807 procedure.

(c) *Failure to request a hearing.* If a 510(k) holder fails to request a hearing within the timeframe specified by FDA in the notice of opportunity for hearing, FDA will consider the failure to request a hearing a waiver of such hearing and FDA will issue a letter rescinding the order determining substantial equivalence.

(d) *Rescission order.* If the 510(k) holder does not request a hearing or if, after proceedings in accordance with this part and part 16 of this chapter are completed, the agency decides to proceed with the rescission of an order determining substantial equivalence, FDA will issue to the 510(k) holder of record an order rescinding the order determining substantial equivalence. The rescission order will state each ground for rescinding the substantial equivalence determination.

(e) *Public notice of final action.* FDA will give the public notice of the order rescinding a determination of substantial equivalence. If FDA determines not to finalize a proposed rescission, FDA will also give the public notice of this determination. These notices will be placed on FDA's home page on the Internet.

Dated: January 5, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–1128 Filed 1–12–01; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 141, and 143

[FRL–6918–1]

RIN 2040–AD59

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on a methods update rule that approves revised versions of test procedures (*i.e.,* analytical methods) for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. The revisions concern methods published by one or more of the following organizations: American Society for Testing Materials (ASTM), United States Geological Survey (USGS), United States Department of Energy (DOE), American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF). Previously approved versions of the methods remain approved. This rule will give the analytical community a larger selection of analytical methods. Today's action also corrects typographical errors and updates references where appropriate.

DATES: Written comments must be received by March 19, 2001.

ADDRESSES: You may submit written comments either by mail or electronically. Send comments to the Methods Update Comment Clerk (W–99–21), U.S. Environmental Protection Agency, Water Docket, MC–4101, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Submit electronic comments to *OW-Docket@epa.gov.* Please submit copies of any references cited in your comments. EPA would appreciate an original and 3 copies of your comments and enclosures (including references).

This **Federal Register** document is also available on the Internet at: *http://www.epa.gov/fedrgstr.* The record for this rulemaking has been established under docket number W–99–21. Supporting documents (including references and methods cited in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, East Tower Basement, Room EB57, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 202/260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Daylight Standard Time for an appointment.

Copies of final methods published by ASTM are available for a nominal cost through American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of final methods published by USGS are available for a nominal cost through the United States Geological Survey, U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225–0425. Copies of final methods published by DOE are available for a nominal cost through the Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, NY 10014–3621. Copies of Standard Methods are available for a nominal cost from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For information regarding wastewater methods contact Dr. Maria Gomez-Taylor, Engineering and Analysis Division (4303), USEPA Office of Science and Technology, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460 (e-mail: Gomez-Taylor.Maria@epa.gov). For information regarding drinking water methods contact Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (e-mail: Reding.Richard@epa.gov).

SUPPLEMENTARY INFORMATION: We are proposing to approve revisions to the Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update. Elsewhere in today's **Federal Register**, the Agency is promulgating this rule as a direct final rule without prior proposal because we view these as non-controversial revisions and do not expect adverse comments. We want to allow immediate use of the methods for compliance monitoring, and believe that it is in the public interest to do so. For further information, please see the information provided in the direct final rule which is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

If EPA does not receive adverse comment, we will not take further action on this proposal. If we receive adverse comment, we will withdraw the direct final rule (or the distinct amendment, paragraph, or section to which comments apply) and it (they) will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in making comments must do so at this time. For the various statutes and executive orders that require findings for rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

List of Subjects

40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Water supply.

Dated: December 11, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 01–179 Filed 1–12–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 00–8633]

RIN 2127–AH96

Federal Motor Vehicle Safety Standards—Motor Vehicle Brake Fluids

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes technical modifications in two of the tests included in our standard on brake fluid, *i.e.,* the evaporation test and the corrosion test. The purpose of the modifications would be to improve the repeatability and reproducibility of the tests. This document also requests comments concerning retention of the evaporation test. A committee of the Society of Automotive Engineers, which originally developed the test, recently voted to delete the test from its standard on brake fluid. While we have tentatively concluded that the test should remain in our standard, we are requesting comments on that issue.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. (This website also enables you to view the materials in the docket for this rulemaking.) You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For legal issues:* Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2992).

For other issues: Sam Daniel, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–4921).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Safety Standard No. 116, *Motor Vehicle Brake Fluids,* specifies requirements for fluids for use in hydraulic brake systems of motor vehicles, containers for these fluids, and labeling of the containers. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid.

Among the requirements of Standard No. 116 are ones addressing the evaporation and corrosiveness of brake fluid. Both of these characteristics of brake fluid are important for the safe and effective operation of vehicles equipped with hydraulic brake systems. For example, if brake fluid evaporates, fluid volume is reduced, ''vapor locking'' can occur, and reduced braking performance or brake failure can occur. Similarly, if brake fluid causes corrosion of brake system components, brake fluid leaks can result, with effects similar to that of evaporation.

In administering Standard No. 116, we have identified several modifications in the standard's evaporation and corrosion tests that we believe would improve repeatability and reproducibility.[1] Those modifications, which we are proposing to incorporate in the standard, are discussed in the sections which follow.

[1] In order for a test to have good repeatability, there must not be undue variability in results when the same test is replicated at the same site. In order for a test to have good reproducibility, there must not be undue variability in results when the same test is replicated at different sites.

II. Proposal

A. Evaporation Test

Standard No. 116 specifies various performance requirements relating to evaporation that must be met when brake fluid is tested according to a specified procedure that involves heating the brake fluid in an oven for an extended period of time. Among other things, the loss by evaporation must not exceed 80 percent by weight. See S5.1.8 and S6.8 of the standard.

For a number of years, the agency has been concerned that the evaporation test may allow too much variability in test results. Because of this, we sponsored a study titled ''Evaporation Test Variability Study,'' which was published in May 1993. The study sought to identify and evaluate parameters of the brake fluid evaporation test procedure of Standard No. 116 that influence the high variability of results between laboratories. It also sought to develop procedural improvements to increase the precision and reproducibility of brake fluid evaporation measurements. This included validating procedural modifications by an interlaboratory round robin program using four designated brake fluids.

The study identified four means by which test result variability could be reduced: (1) Using a rotating shelf in the oven with a 6 rpm sample rotation, (2) specifying the location of the shelf supporting the sample within the oven, (3) controlling the oven temperature monitoring point, and (4) using oven calibration fluid for purposes of oven standardization. We are placing a copy of the study in the docket.

After we published the study, the Society of Automotive Engineers (SAE) committee on brake fluids initiated work to consider revising its evaporation test procedure to address these points. The SAE evaporation test procedure is set forth as part of Motor Vehicle Brake Fluid-SAE J1703 JAN95. The SAE committee developed a draft procedure that uses a rotating shelf oven, defines shelf placement, and includes temperature monitoring. The committee did not reach agreement on an oven calibration fluid because of concerns about lot variability.

More recently, however, the SAE committee voted to eliminate the evaporation test from its standard. Members of the committee believed that the requirement is outdated. The test was developed at a time when brake fluids did not have as good resistance to evaporation as today's brake fluids, and vehicle brake fluid systems were not sealed. Members of the committee also believed that the evaporation test is redundant with the boiling point test, which evaluates similar brake fluid properties.

Particularly given that the evaporation test included in Standard No. 116 was originally developed by SAE, we have considered, in light of SAE's action to delete the test from its standard, whether the test should be retained in our standard. We have tentatively concluded that the evaporation test should be retained in Standard No. 116. We are concerned that even though today's brake fluids may well have better resistance to evaporation than those in use when the test was originally developed, deletion of the test from Standard No. 116 could permit the introduction of inferior brake fluids into the United States market. Even if current brake fluid manufacturers would be unlikely to introduce such products, such introduction could come from new market entrants. Accordingly, we have tentatively decided to retain the evaporation test in Standard No. 116. We are, however, requesting comments on this issue.

Assuming that the evaporation test is retained in Standard No. 116, we believe it is appropriate to improve the repeatability and reproducibility of the test. While we believe there are unresolved technical issues concerning oven calibration fluid, we believe that the repeatability and reproducibility of the evaporation test can be improved by adopting the other means for reducing test result variability that were identified by the NHTSA-sponsored report and included in the SAE committee draft procedure. Accordingly, we are proposing to amend the test procedure to specify use of a rotating shelf oven, define shelf placement, and specify temperature monitoring.

We request comments on whether there are any other modifications to the evaporation test that would improve repeatability and reproducibility. Depending on the comments, we may, in the final rule, adopt additional modifications to the current test procedure and/or make changes in the specific modifications we are proposing.

B. Corrosion Test

Standard No. 116's corrosion test involves placing six metal strips (steel, tinned iron, cast iron, aluminum, brass and copper) in a standard brake wheel cylinder cup in a test jar, immersing the entire assembly in the brake fluid being tested, and then heating the fluid for an

extended period of time. The metal strips and wheel cylinder cup represent the materials that comprise brake system components that are in contact with brake fluid (master cylinders, brake lines, caliper pistons, wheel cylinders, etc.).

A variety of performance requirements must be met at the end of the corrosion test procedure. Among other things, the metal strips are examined for weight change, which must not exceed specified percentages. See S5.1.6 and S6.6 of the standard.

While we do not have as much information concerning variability of the corrosion test as we do for the evaporation test, we have identified a change in the specification concerning how the metal strips are prepared prior to testing that we believe would improve repeatability and reproducibility. The standard currently specifies that each of the strips, other than the tinned iron strips, is to be abraded with wetted silicon carbide paper grit No. 320A until all surface scratches, cuts and pits are removed, and then polished with grade 00 steel wool.[2] We believe that less variability would result if the strips were further abraded with wetted silicon carbide paper grit No. 1200 instead of being polished with grade 00 steel wool, and if a visual acuity requirement for evaluating the presence of surface scratches, cuts and pits were specified.

The steel wool may produce slight surface irregularities due to interaction with dissimilar metals that the No. 1200 silicon carbide paper would not. The visual acuity requirement would ensure removal of all surface scratches, cuts and pits that are visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches).

III. Effective Date

We are proposing to make the amendments proposed in this document effective one year after publication of a final rule in the **Federal Register**.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.''

The proposed amendments would not affect the stringency of Standard No. 116, but would instead improve the repeatability and reproducibility of the standard's evaporation and corrosion tests. This would facilitate both the manufacturers' efforts in certifying their brake fluid and the agency's efforts in enforcing the standard.

The costs of the proposed amendments would be minimal. We estimate that there are five to 10 brake fluid manufacturers that provide brake fluid for the United States market, including OEM and aftermarket brake fluid, and a somewhat larger number of packagers of brake fluid. There are also as many as five independent organizations with brake fluid testing capability.

Each manufacturer, packager and organization that tested brake fluid would likely need to upgrade at least one oven so that it has a rotating shelf. We estimate the cost of modifying an existing oven at approximately $200. The cost of a new oven, which has a life expectancy of 10 to 20 years, is approximately $3,000.

Any change in cost of conducting an evaporation test or corrosion test would be so minimal as to be nonquantifiable. Therefore, the proposed rule is unlikely to result in any change in the cost of brake fluid.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action.

As discussed above, the proposed amendments would not affect the stringency of Standard No. 116, but would instead make technical modifications in the standard's evaporation test and corrosion test to improve repeatability and reproducibility. Any change in cost of conducting an evaporation test or corrosion test would be so minimal as to be nonquantifiable, and the proposed rule is unlikely to result in any change in the cost of brake fluid. Therefore, the proposed amendments would not have any significant economic impacts on small businesses, small organizations or small governmental jurisdictions.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The proposed rule would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This rulemaking action does not include any collections of information.

[2] Tinned iron strips are not abraded or polished during preparation for corrosion testing because the tin coating is very thin and the test strips are highly polished to begin with.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of those criteria.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [3] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. We note that the current evaporation and corrosion tests of Standard No. 116 are based on an SAE recommended practice. The proposed amendments, which would make modifications in those tests, are based on a draft procedure developed by an SAE committee.

[3] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

V. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESS**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we propose to amend 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 would continue to read as follows:

Authority. 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.116 would be amended by:

a. revising S6.6.3(e);

b. in S6.6.4(a), revising the first and third sentences;

c. revising S6.8.2(b); and

d. in S6.8.3, revising the fourth sentence and adding three new sentences after the fourth sentence.

The revised and added paragraphs would read as follows:

§ 571.116 Standard No. 116; Motor vehicle brake fluids.

* * * * *

S6.6.3 * * *

* * * * *

(e) *Supplies for polishing strips.* Waterproof silicon carbide paper, grit No. 320A and grit 1200; lint-free polishing cloth.

* * * * *

S6.6.4 * * *

(a) * * * Except for the tinned iron strips, abrade corrosion test strips on all surface areas with 320A silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids) until all surface scratches, cuts and pits visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches) are removed. * * * Except for the tinned iron strips, further abrade the test strips on all surface areas with 1200 silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids), again using a new piece of paper for each different type of metal. * * *

* * * * *

S6.8.2 * * *

* * * * *

(b) *Oven.* A top-vented gravity-convection oven equipped with a 6 rpm rotating shelf and capable of maintaining a temperature of 100° ± 2° C. (212° ± 4° F.). The center of the top surface of the rotating shelf coincides with the center of the oven.

* * * * *

S6.8.3 * * *

Level the oven and place the four petri dishes, each inside its inverted cover, on the rotating shelf in the oven at 100° ± 2° C. (212° ± 4° F.) for 46 ± 2 hours. The thermometer for monitoring oven temperature is placed 25 mm ± 5 mm (1 inch ± 0.2 inch) above the rotating oven shelf containing the petri dishes. The 100° C. mark on the thermometer is either outside the oven or the thermometer is capable of being read from outside the oven without opening the oven door. The oven door is not opened to read the thermometer during the test. * * *

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Issued on: January 8, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1219 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 66, No. 10
Tuesday, January 16, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–085–3]

Aquaculture; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify the aquaculture industries, interested parties, and the general public that a public meeting will be held to discuss how and to what extent the Animal and Plant Health Inspection Service should regulate aquatic species, and to discuss any other issues concerning possible regulation of aquaculture by the Agency.

DATES: The public meeting will be held on Friday, February 16, 2001, from 9 a.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Radisson Inn Cincinnati Airport, Cincinnati/Northern Kentucky International Airport, Hebron, KY, in conjunction with the annual meeting of the North Central Regional Aquaculture Center.

FOR FURTHER INFORMATION CONTACT: For information about the APHIS public meeting, contact Dr. Otis Miller, Jr., National Aquaculture Coordinator, Center for Planning, Certification, and Monitoring, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231, (301) 734–6188.

For information regarding the annual meeting of the North Central Regional Aquaculture Center, contact Liz Bartels at bartels@pilot.msu.edu or (517) 353–1962.

SUPPLEMENTARY INFORMATION: On May 4, 1999, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (64 FR 23795–23796, Docket No. 98–085–1) an advance notice of proposed rulemaking (ANPR) titled ''Aquaculture: Farm-Raised Fin Fish.'' We published this ANPR after receiving petitions [1] asking us to regulate aquaculture in various ways. Many petitioners asked us to define farmed aquatic animals as livestock. In general, the petitioners seemed to be interested in receiving the same services that domestic producers of livestock receive for animals moving in interstate and foreign commerce. However, based on the petitions alone, it was difficult for us to determine what segments of the industry want services and exactly what services they want. It was also difficult to determine the objectives sought by the petitioners who were requesting Federal regulation. We published the ANPR in an attempt to clarify the industry's needs, the nature of the services sought, and the concerns the petitioners had with regard to such regulations.

We received 55 comments [2] in response to the ANPR. A majority of the commenters supported the idea of APHIS regulation of cultured fin fish. Unfortunately, the commenters generally did not clearly distinguish between fin fish raised for food and ornamental fin fish. Commenters who wanted regulation were, however, very clear that they want programs to prevent and control disease and to support increased commerce, both domestic and export.

The commenters also suggested that any rulemaking initiated by APHIS be a negotiated rulemaking. In negotiated rulemaking, industry representatives and other interested persons meet with APHIS officials and draft proposed regulations together. The proposed regulations are then published for public comment. Negotiated rulemaking is designed to ensure that all interested persons are involved together from the start in the development of regulations.

Unfortunately, negotiated rulemaking is not suitable for all situations. It works well when there is a small number of interested parties, and the parties are easy to identify. This is not the case with regard to aquaculture. The aquaculture industry is very large and diverse. It would be difficult for us to identify everyone who should be represented in a negotiated rulemaking. In addition, there are many parties outside aquaculture that would have a substantial interest in such a rulemaking. In our view, the number of people who would need to participate in a negotiated rulemaking would be too large and would suggest that negotiated rulemaking is not appropriate. Furthermore, a negotiated rulemaking would be expensive, and APHIS does not have adequate funds. Therefore, we have concluded that it would not be appropriate to pursue an aquaculture negotiated rulemaking.

We have not, however, decided whether to pursue aquaculture rulemaking by other means. Before we make that decision, we want to have as much information as possible from all interested persons, and we want to provide the aquaculture industries and other interested persons with as much opportunity as possible to discuss with us and inform us regarding the relevant issues.

Therefore, we are holding a series of public meetings. Public meetings allow anyone who is interested—industry representatives, producers, consumers, and others—to present their views and to exchange information among themselves and with APHIS.

There are no set agendas for the meetings. Any issues and concerns related to aquaculture and possible APHIS regulatory action can be discussed. However, there are three specific issues on which we would like more information. These are issues that the people and organizations who commented on our ANPR either did not address or were unclear about. Specifically, if APHIS does propose regulations: (1) Should our program be mandatory or voluntary; (2) should we cover shell fish; and (3) should we cover ornamental fin fish?

Information elicited at the meetings could result in a new APHIS regulatory program, or in changes to aquaculture-

[1] All the petitions and comments we received are a part of the rulemaking record for Docket No. 98–085–1. You may read the petitions and comments in our reading room. The reading room is locatd in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

[2] All the petitions and comments we received are a part of the rulemaking record for Docket No. 98–085–1. You may read the petitions and comments in our reading room. The reading room is locatd in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

related services currently provided by APHIS.

We have scheduled this public meeting, the second meeting in our series, for Friday, February 16, 2001, at the Radisson Inn Cincinnati Airport. If you wish to speak at the meeting, please register in advance by calling the Regulatory Analysis and Development voice mail at (301) 734–8139. Leave a message with your name, telephone number, organization, if any, and an estimate of the time you need to speak. You may also register at the meeting itself. Please register at the meeting room between 8:30 a.m. and 9 a.m., before the meeting officially begins. Starting with the advance registrants, we will call speakers in the order in which they registered.

The meeting will begin at 9 a.m. and is scheduled to end at 3 p.m. We may end the meeting early if all the registered speakers have had a chance to speak and if no one else wants to speak. We may also extend the meeting, or limit the time allowed for each speaker, if necessary, so all interested persons have an opportunity to participate.

An APHIS representative will preside at the meeting. The meeting will be recorded. We encourage speakers to present written statements, though it is not required. If you choose to present a written statement, please provide the chairperson with a copy. The complete record, including the transcript and all written comments, will be available to the public.

This meeting is the second in our series of public meetings. The first public meeting will be held on January 25, 2001, in Lake Buena Vista, FL. We plan to hold additional meetings in Idaho, Maine, Mississippi, Pennsylvania, and Washington. We will publish a notice or notices in the **Federal Register** announcing the dates, times, and locations of the meetings.

Done in Washington, DC, this 9th day of January 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–1199 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service; Cooperative State Research, Education, and Extension Service Biotechnology Risk Assessment Research Grants Program for Fiscal Year 2001; Request for Proposals and Request for Input

AGENCY: Agricultural Research Service; Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Agricultural Research Service (ARS) and the Cooperative State Research, Education, and Extension Service (CSREES) are announcing the Biotechnology Risk Assessment Research Grants Program (the ''Program'') for fiscal year (FY) 2001. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Biotechnology Risk Assessment Grant awards. The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The Program is administered by CSREES and ARS of the U.S. Department of Agriculture.

CSREES also requests comments regarding this request for proposals (RFP) from any interested party. These comments will be considered in the development of the next RFP for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA).

DATES: All proposals must be received at USDA on or before March 15, 2001. Proposals not received on or before this date will not be considered for funding.

User comments are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Proposals must be submitted to the following mailing address: Biotechnology Risk Assessment Research Grants; *c/o* Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., SW.; Washington DC 20250–2245.

The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Biotechnology Risk Assessment Research Grants; *c/o* Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, S.W.; Washington DC 20024. Telephone: (202) 401–5048.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

FOR FURTHER INFORMATION CONTACT: Dr. Deborah Sheely; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2241; 1400 Independence Avenue, SW.; Washington, DC 20250–2241; Telephone: (202) 401–1924; e-mail: dsheely@reeusda.gov; or Dr. Robert M. Faust; Agricultural Research Service; U.S. Department of Agriculture; Room 338, Building 005, BARC–West; Beltsville, MD 20705; Telephone: (301) 504–6918; e-mail: rmf@ars.usda.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

Stakeholder Input

CSREES is requesting comments regarding this RFP from any interested party. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding. These comments will be considered in the development of the next RFP for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Comments should be submitted as provided for in the

ADDRESS and **DATES** portions of this Notice.

Part I. General Information

A. Legislative Authority

The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The administrative regulations for this program are found at 7 CFR part 3415.

B. Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Part II. Program Description

CSREES and ARS will competitively award research grants to support science-based biotechnology regulation, thereby helping to address concerns about the effects of introducing genetically modified organisms into the environment and helping regulators to develop policies regarding such introduction.

The Program's emphasis is on risk assessment, which is defined as the science-based evaluation and interpretation of factual information in which a given hazard, if any, is identified, and the consequences associated with the hazard are explored. Research funded through this program will be relevant to risk assessment and the regulatory process. When evaluating transgenic organisms, regulators must answer the following four general questions: (1) Is there a hazard (potential hazard identification)?; (2) how likely is the hazard to occur (quantifying the probability of occurrence)?; (3) what is the severity and extent of the hazard if it occurs (quantifying the effects)?; and (4) is there an effect above and beyond what might occur with an organism, with similar traits, developed using other technologies?

Although investigators are not required to perform actual risk assessments in the research they propose, they should design studies that will provide information useful to regulators for making science-based decisions in their assessments of genetically-modified organisms. Accordingly, program applicants are encouraged to address the following questions in their proposals: (1) What is the relevance of this research to the evaluation of transgenic organisms?; (2) What information will be provided by this research to help regulators adequately assess transgenic organisms?; and (3) How does this research model appropriate studies necessary to identify and/or characterize hazards associated with introducing genetically-modified organisms into the environment.

The Program does not support risk management research, which is defined to include either (1) research aimed primarily at reducing effects of specific biotechnology-derived agents or (2) a policy and decision-making process that uses risk assessment data in deciding how to avoid or mitigate the consequences identified in a risk assessment. Proposals must be relevant to risk assessment to be eligible for this Program.

In addition to addressing the questions posed above, proposals must include a statement describing the relevance of the proposed project to one or more of the research topics requested in this RFP. In addition, proposals should include detailed descriptions of the experimental design and appropriate statistical analyses to be done.

Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research deemed not appropriate to risk assessment.

A. Purpose of the Program

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the effects of introducing into the environment genetically modified organisms, including plants, microorganisms (including fungi, bacteria, and viruses), arthropods, fish, birds, mammals and other animals excluding humans. Investigations of effects on both managed and natural environments are relevant. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research that it funds. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered.

B. Available Funding

Subject to the availability of funds, the anticipated amount available for support of the Program in FY 2001 is $1.5 million. The agency intends to award these funds for project proposals in the targeted areas with no more than two awards for conference proposals.

Pursuant to section 1462 of NARETPA, 7 U.S.C. 3310, indirect costs charged against a grant awarded under this program may not exceed 19 percent of the total Federal funds provided under the grant award. (An alternative method to calculate this limitation is to multiply total direct costs by 23.456 percent.)

C. Areas of Research To Be Supported

Proposals addressing the following topics are requested:

1. Research relevant to assessing the effects of the introduction into the environment of genetically engineered organisms. Potential subject areas include but are not limited to: (a) research on the potential for recombination between plant viruses and plant-encoded viral transgenes; (b) research on the potential for non-target effects of introduced foreign gene products expressed in genetically modified plant-associated microorganisms (e.g., compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in plants (e.g., *Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment, including their impact on beneficial or soil organisms; (c) changes in ecosystem or agro-ecosystem function and composition; (d) research on gene flow from transgenic crops to related plants and exploration of factors influencing gene transfer rates. Gene flow experiments on crops with a high potential for gene introgression into wild or weedy relatives (e.g., those with high rates of outcrossing and with overlapping habitats are of particular interest); (e) research on the role that insects and/or pathogens play in limiting populations of crops and weeds as this relates to acquisition of transgenic pest protection by crops and/or weeds; (f) research on how transgenic plants, especially grasses, that are resistant or tolerant to environmental stresses (such as drought or salt) affect land use practices (new habitats or tillage), water use (irrigation) patterns, and species displacement.

The data collected may include: survival; reproductive fitness; genetic stability (e.g., transgene retained during backcrossing); genetic recombination; horizontal gene transfer; loss of genetic diversity; or enhanced competitiveness. As long as the data gathered are relevant to the assessment of the effects of genetically modified organisms, the experiments need not utilize transgenic organisms. When feasible, measures of risk should include estimates of expected frequency and impact, and address the availability of effective mitigation measures to reduce or avoid impacts.

2. Research on large-scale deployment of genetically engineered organisms, especially commercial uses of such organisms, with special reference to considerations that may not be revealed

through small-scale evaluations and tests and may address cumulative effect concerns. Studies should attempt to project impacts over as large a spatial and temporal scale as feasible. Potential focus areas include but are not limited to:

(a) Studies of insects and viruses that have developed resistance to plants possessing transgenic protection from them. This may be done by monitoring locations where such plants are grown on a commercial scale or in large scale production. The analysis of resistant viral strains should include analyzing whether the strain arose via recombination between viral transgenes and the viral genome and an analysis of how the resistance was effected (e.g., changed coat protein with increased seed or insect vector transmissibility). The potential for transcapsidation in transgenic plants to alter seed transmission can be evaluated by comparing the levels of infected seed from transgenic plants inoculated with a virus, that could be transcapsidated, with seed from nontransgenic plants inoculated in a similar manner. Analysis should include the presence of satellite RNA (satRNA) which may replicate with the help of a suitable helper virus. Such projects should survey the production sites for two to three years.

(b) Studies to assess the impact of transgenic plants, especially insect resistant or herbicide tolerant plants, on biodiversity of agro-ecosystems. This could include changes in population dynamics and species diversity of nontarget arthropods (particularly beneficial predators, parasites, and pollinators), plants, mammals, avian or microbial species (including both pathogenic or beneficial fungi or bacteria associated with the crop plant). These studies should be conducted in such a way as to compare the impacts of transgenic plants to nontransgenic cultivars with otherwise similar phenotypes using the commonly recommended or adopted practices for tillage, irrigation, and control of pests or weeds. Also, effects of these plants on soil erosion or water quality could be included. Extensive documentation of agricultural practices will be a necessary component.

(c) Monitoring for the occurrence of individual or stacked resistance traits in wild/weedy relatives of commercialized transgenic crops, and subsequently, any effects of such genes on fitness, competitiveness, and weediness.

3. Research to assess the effects of transgenes in wild relatives of crop species. This research could evaluate the potential for unexpected fitness effects by comparing fitness characteristics in hybrids or introgressants between a transgenic line and the wild relative to hybrids or introgressants between the nontransgenic line and the wild relatives, or could evaluate fitness effects of the introduced trait by evaluating survival or reproductive success under natural conditions, or through planned competition experiments. Crop species could include those with compatible wild relatives in the U.S. which have been deregulated (e.g., rice, rapeseed, melon, and squash) or are being developed (e.g., sunflower, turfgrasses, strawberry). Introduced traits could include those that have potential effects on fitness (e.g., pest or disease resistance), or that have potential physiological or metabolic effects.

4. Research to assess the effects of genetically engineered plants with ''stacked'' resistance genes or genes that confer broad resistance to insects or diseases. These genes may give recipient plants a greater selective advantage and lead to less predictable ecological consequences. Possible areas of research include, but are not limited to: (a) The impact of gene stacking on non-target species; (b) the effects of stacked genes on pest populations; (c) transmission and establishment of multiple resistance genes into weedy relatives; (d) influence of genetic factors such as linkage on the transmission and establishment of multiple genes; and (e) ecological importance in weedy hosts of pest complexes sufficiently variable as to require broad resistance or stacked genes for their control.

5. Research to develop statistical methodology and quantitative measures of risks associated with field testing of genetically modified organisms.

6. The Program will, subject to resource availability, provide partial funding to organize a conference that brings together scientists, regulators, and others to review the science-based data relevant to risk assessment of genetically modified organisms released into the environment. The steering committee for the conference should include representatives from a variety of relevant scientific disciplines, such as ecology, population biology, pathology, production and resource management science, as well as educators, extension specialists and others, as appropriate. The goals of such a conference may include sharing of scientific information and identification of gaps in knowledge, and/or public education and outreach, among others. Publication of the proceedings will be required. The Program will fund a maximum of two conference proposals.

Part III. Content of a Proposal

The format guidelines for full research proposals, found in the administrative provisions for the Program at 7 CFR 3415.4(d), should be followed for the preparation of proposals under the Program in FY 2001. In addition, please note the following items: (1) the Department elects not to solicit preproposals in FY 2001; (2) a proposal's project summary may not exceed one single- or double-spaced page. Include on this page the proposal title, as well as names and institutions of each investigator; (3) Proposal budgets (Form CSREES–55) must include funds sufficient for travel by all principal investigators to Washington, D.C. for one meeting during the period of the award. The purpose of this meeting is to report on the progress of the research to USDA program and regulatory staff; and (4) a separate conflict of interest list must be submitted with the proposal for all key personnel for whom a curriculum vita (C.V.) is required. This list is necessary to assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel in the grant proposal.

For all key personnel (as described in the proposal project description), list alphabetically the full names of only the individuals in the following categories. It is not necessary to list individuals in each category separately; rather, a single alphabetized list for all key personnel is preferred. Additional pages may be used as necessary. A conflict of interest list must be submitted before a proposal is considered complete. Inclusion of a C.V. or publication list in lieu of a conflict of interest list is not sufficient. Other investigators working in the applicant's specific research area are not in conflict of interest with the applicant unless those investigators fall within one of the categories listed below:

(A) All collaborators on research projects within the past four years, including current and planned collaborations;

(B) All co-authors on publications within the past four years, including pending publications and submissions;

(C) All persons in your field with whom you have had a consulting or financial arrangement within the past four years; and

(D) All thesis or postdoctoral advisees/advisors within the past four years.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 and 7 CFR Part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES and ARS in order to assist CSREES and ARS in carrying out their responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or whether it can be excluded from this requirement on the basis of the categorical exclusions listed in 7 CFR 3407.6. To assist CSREES and ARS in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, NEPA Exclusions Form (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as ''NEPA Considerations'' and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, Application for Funding, in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES and ARS may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Part IV. How To Obtain Application Materials

Copies of this RFP, the administrative provisions for the Program (7 CFR Part 3415), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245; Telephone Number: (202) 401–5048.

Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 2001 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

This RFP and other application information and materials also are available at the Program's website (http://www.reeusda.gov/crgam/biotechrisk/biotech.htm).

Part V. Submission of a Proposal

A. What To Submit

An original and 14 copies of a proposal must be submitted. Proposals should be typed on 8 ½″ x 11″ white paper, single-or double-spaced, and one side of the page only. The text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Each copy of each proposal must be stapled securely in the upper lefthand corner. (DO NOT BIND.) All copies of the proposal must be submitted in one package.

B. Where and When to Submit

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before March 15, 2001, at the following address: Biotechnology Risk Assessment Research Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307; Waterfront Centre; 800 9th Street, S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before March 15, 2001. Proposals submitted through the U.S. mail should be sent to the following address: Biotechnology Risk Assessment Research Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged via the Internet (e-mail). Therefore, it is important to include your e-mail address on Form CSREES–661 when applicable. This acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

Part VI. Proposal Evaluation

Proposals will be evaluated by the Administrators of ARS and CSREES assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance to both risk assessment research and regulation of agricultural biotechnology. Proposals for funding a scientific research conference grant will be evaluated on the following criteria: choice of topics and selection of speakers; general format of the conference, especially with regard to its appropriateness for fostering scientific exchange and/or public understanding; provisions for wide participation from the scientific and regulatory community and others as appropriate; qualifications of the organizing committee and appropriateness of invited speakers to the topic areas being covered; and appropriateness of the budget requested and qualifications of the project personnel. All proposals are considered together in making award decisions. However, no more than two conference grants will be awarded.

Part VII. Supplementary Information

A. Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR Part 3415, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include but are not limited to:

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grant and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations.

B. Programmatic Contact

For additional information on the Program, please contact: Dr. Deborah Sheely; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2241; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2241; Telephone: (202) 401–1924; e-mail: dsheely@reeusda.gov; or Dr. Robert M.

Faust; Agricultural Research Service; U.S. Department of Agriculture; Room 338, Building 005, BARC-West; Beltsville, MD 20705; Telephone: (301) 504–6918; e-mail: rmf@ars.usda.gov.

C. Additional Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 4th day of January, 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

Edward B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 01–1018 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Interim National Drought Council

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Interim National Drought Council meeting.

SUMMARY: The Interim National Drought Council (Interim Council) was established through a Memorandum of Understanding (MOU). It's purpose is to coordinate activities between and among Federal Agencies, States, local governments, tribes and others. The first meeting of the Interim Council was held November 9, 2000. All meetings are open to the public; however, seating is limited and available on a first-come basis.

DATES: The Interim Council will meet on January 25, 2001, in Room 233 of the Hall of the States building located at 444 North Capitol Street, NW. in Washington, DC from 10:00 a.m. to 11:30 a.m. and then from 12:30 p.m. to 3:00 p.m.. All times noted are Eastern Standard Time. This meeting will be devoted to revising the work plan and other Interim Council business.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Executive Director, Interim National Drought Council, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, D.C., 20250–0501 or telephone (202) 720–3168; FAX (202) 720–9688; internet *leona.dittus@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the MOU is to establish a more comprehensive, integrated, coordinated approach toward reducing the impacts of drought through better preparedness, monitoring and prediction, risk management, and response to drought emergencies in the United States. The Interim Council will encourage cooperation and coordination between and among Federal, State, local, and tribal governments and others, relative to preparation for and response to serious drought emergencies. Activities of the Interim Council include providing coordination to: (a) Resolve drought related issues, (b) exchange information about lessons learned, and (c) improve public awareness of the need for drought planning and mitigation measures. The Interim Council is co-chaired by the Secretary of Agriculture or his designee, and a non-federal co-chair, selected from among the members who are not Federal officers or employees. Ms. Ane D. Deister, Executive Assistant to the General Manager, Metropolitan Water District of Southern California, representing urban water interests, was selected as the non-federal co-chair at the Interim Council's organizational meeting. Administrative staff support essential to the execution of the Interim Council's responsibilities shall be provided by USDA. The Interim Council will continue in effect for 5 years or until Congress establishes a permanent National Drought Council.

If special accommodations are required, please contact Leona Dittus, at the address specified above, by COB January 22, 2001.

Signed at Washington, D.C., on January 10, 2001.

George Arredondo,

Administrator, Farm Service Agency.

[FR Doc. 01–1226 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Meeting on the Implementation of the United States Warehouse Act

AGENCY: Farm Service Agency, Agriculture.

ACTION: Notice of meeting.

SUMMARY: To solicit comments and options for consideration in implementing the United States Warehouse Act of 2000 that was enacted on November 9, 2000 (USWA 2000), the Department of Agriculture (USDA) will conduct a public meeting.

The meeting is open to the public with attendance limited to space that will be available on a first come basis. All attendees are asked to be prepared to share information concerning their current and future e-commerce activities. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the contact person listed below in advance of the meeting. No registration is required and there is no fee to attend the public meeting.

DATES: The public meeting to present implementation options and to solicit oral comments will be held on January 23, 2001, from 9 a.m. to 4 p.m. E.S.T., in the Jefferson Auditorium of the U.S. Department of Agriculture South Building, 1400 Independence Avenue, SW., Washington, DC, near the Smithsonian Metro Station.

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory Division, Farm Service Agency, 1400 Independence Avenue SW., STOP 0553, Washington DC 20250, telephone (202) 720–7433; e-mail: Roger_Hinkle@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: The USWA 2000 was enacted on November 9, 2000, to replace the original United States Warehouse Act (USWA) that was enacted in 1916. USWA 2000 can be found online at: www.fsa.usda.gov/daco/uswamain/public-law-106–472.pdf. This statute was enacted to make Federal warehouse licensing and operations more relevant to today's agricultural marketing and financial systems. USWA 2000 authorizes the Secretary of Agriculture to promulgate regulations governing (1) The issuance and transfer of electronic warehouse receipts across State and international boundaries; (2) the manner in which electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be

issued or transferred, including transfers across State and international boundaries; and (3) the standardization of such electronic documents. This new paperless flow of agricultural commodities from the farm to the end-user will provide significant savings and efficiencies for producers, bankers, warehouse operators, and other affected parties across the nation and throughout the world, and will make U.S. agricultural more competitive in world markets.

Included in USWA 2000 were statutory deadlines for the issuance of proposed and final regulations, and the new statute provides that the current USWA that was enacted in 1916 expires no later than August 1, 2001.

Items that will be discussed in the subject meeting include, but are not limited to the following:

(1) What documents and transactions should USDA make available for e-commerce?

(2) Should USDA standardize criteria and formats for e-commerce concerning commodity warehousing? Financial and business records? Electronic data interchanges? Recordkeeping? Commodity merchandising?

(3) The regulations at 7 CFR 735.100 through 735.105 currently provide specifically for cotton Electronic Warehouse Receipts (EWR) and EWR provider requirements and standards. Should similar regulations and processes be adopted or expanded when including additional commodities? If not, what criteria and requirements should USDA establish for electronic warehouse commerce providers?

(4) What industry and business-based processes should USWA offer?

The agenda includes: (1) Presentation on options currently under consideration for implementing USWA 2000; (2) discussions on the implementation of electronic commerce authorized under USWA 2000, with opportunity for comment; and (3) discussions on warehouse issues, with opportunity for comment.

From 9 a.m. to 12 p.m., the discussion will concentrate on electronic commerce initiatives that are authorized by USWA 2000, and from 1 p.m. to 4 p.m. the discussion will concentrate on the statutory changes that will affect warehousing issues. Each session will (1) outline options that are under consideration for implementing USWA 2000, and (2) provide attendees with an opportunity to present oral comments and submit written and oral questions. An official transcript will be prepared and will be available online at www.fsa.usda.gov/daco/uswamain/uswa2000-transcript.pdf. This official transcript will also be available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Comments: Written comments can be submitted in hard copy by mail to Roger Hinkle at the address shown above, or by fax at (202) 690–3123, or by e-mail to Roger_Hinkle@wdc.fsa.usda.gov. In order to ensure comments will be received before the meeting, submit written comments no later than January 15, 2001.

Signed at Washington, DC on January 8, 2001.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. 01–1020 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–053N]

Codex Alimentarius Commission: Meeting of the Codex Committees on Fats and Oils and Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS) are sponsoring a public meeting on Wednesday, January 17, 2001. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States' positions that will be discussed at two upcoming Codex Committee meetings. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Sessions of the Codex Committee on Fats and Oils (CCFO) and the Codex Committee on Methods of Analysis and Sampling (CCMAS) and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, January 17, 2001, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The public meeting will be held in Room 1813, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. To receive copies of the documents referenced in this notice, contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the world wide web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex.*

Submit one original and two copies of written comments to the FSIS Docket Room at the address above and reference docket number 00–053N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Assistant U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The public meeting announced in this notice will provide information and an opportunity for public comment on two upcoming Codex Committee meetings:

- Seventeenth Session of the Codex Committee on Fats and Oils (CCFO) that will be held in London, United Kingdom, February 19–23, 2001.

• Twenty-third Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) that will be held in Budapest, Hungary, February 26–March 2, 2001.

The CCFO was established to elaborate worldwide standards for fats and oils and their products. The CCMAS performs multiple functions such as defining criteria appropriate to Codex methods of analysis and sampling, specifying reference methods of analysis and sampling, endorsing methods of analysis and sampling proposed by the Codex Committees, elaborating sampling plans, and considering specific sampling and analysis problems. The Government of the United Kingdom will chair the CCFO meeting and the Government of Hungary will chair the CCMAS meeting.

Issues To Be Discussed at the Public Meeting

The U.S. delegate for the Codex Committee on Methods Analysis and Sampling will discuss the following subjects at the public meeting from 9:00 a.m. to 10:30 a.m.

Agenda item	Subject matter	Document reference
1	Adoption of the Agenda.	
2	Matters referred to the committee	CX/MAS 01/2.
3	Proposed draft general guidelines on sampling at step 4	CX/MAS 01/3.
4	Criteria for evaluating acceptable methods of analysis for Codex purposes	CX/MAS 01/4.
	(a) Proposed draft guidelines on the application of the criteria approach at step 4	CX/MAS 01/4, Add. 1.
	(b) Amendments to the procedural manual of the Codex Alimentarius Commission relevant to the criteria approach.	ALINORM 99/23, Appendix II.
	—Principles for the establishment of Codex methods of analysis and sampling.	
	—Relations between commodity committees and general committees.	
5	Consideration of harmonized guidelines for the use of recovery information in analytical measurements.	CX/MAS, 01/6.
6	Harmonization of analytical terminology in accordance with international standards: ''measurement limits''.	CX/MAS, 01/7.
7	Measurement uncertainty.	
	(a) Progress report by relevant Organizations.	
	(b) Relationship between the analytical result, the measurement uncertainty and the specification in the Codex standard.	CX/MAS, 01/8.
8	In-house method validation	CX/MAS, 01/9.
9	Endorsement of methods of analysis provisions in Codex standards	CX/MAS, 01/10.

The U.S. delegate for the Codex Committee on Fats and Oils will discuss the following subjects at the public meeting from 10:30 a.m. to 12:00 noon.

Agenda item	Subject matter	Document reference
1	Adoption of the Agenda.	
2	Matters referred to the Committee	CX/FO, 01/2.
3	Draft revised standard for olive oils and olive pomace oils at step 7	CL 2000/32–FO.
4	Proposed draft amendments to the standard for named vegetable oils (including provisions for high oleic acid safflower oil and high oleic sunflower oil at step 4).	CL 2000/25–FO, CL 2000/25 A, FO.
5	Proposed draft standard for fat spreads and blended spreads at step 3	ALINORM 99/1, Appendix VI.
6	Proposed draft amendment to the code of practice for the storage and transport of edible fats and oils in bulk: lists of acceptable previous cargoes and lists of banned immediate previous cargoes at step 4.	CL 2000/26–FO, Part I and II.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: January 9, 2001.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 01–1157 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, January 31, 2001, at the Gifford Pinchot National Forest

Office, located at 10600 NE 51st Circle, Vancouver, Washington. The meeting will begin at 9 a.m. and continue until 4:15 p.m. The purpose of the meeting is to: (1) Review Forest Monitoring for FY 2000, (2) Discuss the Secure Rural Schools and Community Self-Determination Act of 2000, (3) Discuss the mission of the committee, and (4) Provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5191, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: January 9, 2001.

Claire LaVendel,

Forest Supervisor.

[FR Doc. 01–1228 Filed 1–12–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Intent Not to Revoke Antidumping Duty Order in Part.

SUMMARY: On September 7, 2000, the Department of Commerce (''Department'') published the preliminary results of the administrative reviews of the antidumping duty orders and intent not to revoke antidumping duty order in part on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters. The period of review (''POR'') is August 1, 1998 through July 31, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld (the POSCO Group), Marlene Hewitt (Dongbu) and (Union), or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–0172 (Panfeld), 202–482–1385 (Hewitt), or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Scope of the Reviews

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'') —for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.,* aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030,

7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A.

Secretary for Import Administration to Troy H. Cribb, Assistant Secretary for Import Administration, dated January 5, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of the POSCO Group. For a discussion of our determination with respect to this matter, see comments 1 and 2 of the POSCO Group's company-specific section of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov.*

Sales Below Cost in the Home Market

The Department disregarded home market below-cost sales that failed the cost test for Dongbu, the POSCO Group, and Union in these final results of review.

Request for Revocation

The POSCO Group

On August 31, 1999, POSCO submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering cold-rolled carbon steel flat products from Korea with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e), this request was accompanied by certifications from POSCO that it had sold the subject merchandise in commercial quantities, at not less than NV for a three-year period, including this review period, and would not sell at less than NV in the future. POSCO also agreed to immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, POSCO sold the subject merchandise at less than NV.

The Department conducted verifications of POSCO's responses for this period of review. In the two prior reviews of this order we determined that POSCO sold cold-rolled carbon steel flat products from Korea at not less than NV or at *de minimis* margins. We have determined that POSCO sold cold-rolled carbon steel flat products at not less than NV during the instant review period.

However, in determining whether a requesting party is entitled to a revocation inquiry, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Pure Magnesium from Canada,* 63 FR 26147 (May 12, 1998). This practice has been codified by § 351.222(e) where a party requesting a revocation review is required to certify that it has sold the subject merchandise in commercial quantities. *See also* § 351.222(d)(1) of the Department's regulations, which state that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in *commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' (emphasis added); *See also,* the preamble of the Department's latest revision of the revocation regulation stating: ''The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years and that, during those years, respondent exported subject merchandise to the United States in *commercial quantities*'' (emphasis added). *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 64 FR 51236, 51237 (September 22, 1999).

For purposes of revocation, the Department must be able to determine that past margins reflect a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. As the Department has previously stated, the commercial quantities requirement is a threshold matter. *See e.g., Pure Magnesium from Canada,* 64 FR 50489, 50490 (September 17, 1999). Thus, a party must have meaningfully participated in the marketplace in order to substantiate the need for further inquiry regarding whether continued imposition of the order is warranted.

Based on the current record, we find that POSCO did not sell merchandise in the United States in commercial quantities during the fourth administrative review (one of the three consecutive reviews cited by POSCO to support its request for revocation). During the POR covered by that review (August 1996 though July 1997), POSCO appeared to have made only one sale in the United States. Moreover, the total tonnage of this sale was small. *See Preliminary Analysis Memo* at Appendix II (August 30, 2000) (''*Prelim. Analysis Memo*''). By contrast, during the period covered by the antidumping investigation, which was only six months long (January 1992 through June 1992), POSCO made several thousand sales whose total quantity is 400 times greater than the quantity for the fourth administrative review period. In other words, POSCO's sales for the entire year covered by the fourth review period were only 0.27% of its sales volume during the six-months covered by the investigation. Similarly, during the current POR, POSCO sold

approximately 400 times more subject merchandise in the United States than during the fourth administrative review.

Consequently, although POSCO received a *de minimis* margin during the fourth administrative review, this margin was not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods (*see Prelim. Analysis Memo*), that it does not provide any meaningful information of POSCO's normal commercial experience. Therefore, we find that POSCO did not meaningfully participate in the marketplace for purposes of qualifying for a revocation analysis and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of 351.222(e) does not qualify for a revocation analysis. For a full discussion, see Decision Memo at Comment 9.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at *http://ia.ita.doc.gov.*

Final Results of the Reviews

We determine that the following percentage weighted-average margins exist for the period August 1, 1998 through July 31, 1999:

Producer/manufacturer/exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products:	
Dongbu	1.35
The POSCO Group	0.12
Union	1.53
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu	0.13
The POSCO Group	2.24
Union	0.21

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products). These rates are the ''all others'' rates from the LTFV investigations. See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 5, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

Issues in Decision Memo

Comments and Responses

General Comments

1. The Net Financial Expenses of POSCO, Dongbu and Union's U.S. Selling Affiliates Should Be Included As Part of POSCO, Dongbu and Union's U.S. Indirect Selling Expenses.
2. Home Market ''credit adjustment''.

Company-Specific Comments

Dongbu Steel Co., Ltd. (''Dongbu'')

3. Calculation and Allocation of U.S. Indirect Selling Expenses.
4. Total Entered Value and the Assessment Rate.
5. Weighting Factors for Quality in the Model Match.

Pohang Iron and Steel Co., Ltd. (''POSCO''), Pohang Coated Steel Co., Ltd. (''POCOS''), and Pohang Steel Industries Co., Ltd. (''PSI'') (collectively, ''POSCO Group'')

6. Home Market Imputed Credit Expenses.
7. Treatment of PSI Rebates.
8. Ministerial Errors.
9. Eligibility for Revocation.
10. Treatment of Sales with Warranty Expenses.
11. Cost Variances.

Union Steel Manufacturing Co., Ltd. (''Union'')

12. Value Added Tax (''VAT'').
13. Obsolete Sales in the Home Market.
14. Home Market Weights v. U.S. Weights.

[FR Doc. 01–1223 Filed 1–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822/823]

Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty administrative reviews and determination not to revoke in part.

SUMMARY: On September 8, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products (CORE) and cut-to-length carbon steel plate (CTL) from Canada (65 FR 54481). These reviews cover five manufacturers. The period of review is August 1, 1998 through July 31, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–0666 (Dofasco Inc. and Sorevco Inc. (collectively, Dofasco) and Gerdau MRM Steel Co. (MRM)), Elfi Blum-Page at (202) 482–0197 (Continuous Colour Coat, Ltd. (CCC) and Clayson Steel Co. (Clayson)), or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On September 8, 2000, the Department published the preliminary results of administrative reviews of the antidumping duty orders on CORE and CTL from Canada (65 FR 54481). We invited parties to comment on the preliminary results of the reviews. On October 9 and 10, 2000, petitioners, CCC, Clayson, Dofasco, and MRM filed case briefs. On October 14 and 16, 2000, petitioners, Clayson, and Dofasco filed rebuttal briefs. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The merchandise covered by these orders consists of two separate ''classes or kinds'' of merchandise: (1) CORE, and (2) CTL plate. The first class or kind, CORE, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, CTL plate, includes hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0,

minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.03 to 0.08 (maximum). With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Joseph A Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated January 8, 2001, which is hereby adopted by this notice.

On November 21, 2000, petitioners and Dofasco submitted a letter to the Department withdrawing their respective case briefs and rebuttal briefs. They requested that we not consider these briefs for our final results. We have decided to grant this request and, therefore, the Decision Memo does not contain a discussion of any issues relating to Dofasco.

A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable.

Determination Not To Revoke the CTL Order in Part

Based on our analysis of comments received, the Department has decided not to alter its preliminary determination not to revoke the order as it pertains to shipments to the United States from MRM. Our analysis of these comments are also contained in the Decision Memo.

Sales Below Cost in the Home Market

The Department disregarded home market below-cost sales that failed the cost test for CCC, Clayson, Dofasco, and MRM in the final results of review.

Determination To Apply the Adverse Facts Available Rate to Metaux Russel Inc.

The Department received no comments on its preliminary determination to apply an adverse facts available rate to Metaux Russel Inc., a respondent in the CTL review. Therefore, we have not altered this decision for these final results of review.

Final Results of Review

We determine that the following weighted-average margins exist for the period August 1, 1998 through July 31, 1999:

Manufacturer/exporter	Margin (percent)
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Continous Colour Coat, Ltd ..	1.81
Dofasco Inc. and Sorevco Inc	0.51
Certain Cut-to-Length Carbon Steel Plate:	
Clayson Steel Co	0.27
Gerdau MRM Steel Co	0.00
Metaux Russel Inc	68.70

Liquidation

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of CORE from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 18.71 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

As a result of a Sunset Review, the Department has revoked the antidumping duty order for CTL from Canada, effective January 1, 2000. *See Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden*, 65 FR 78467 (Dec. 15, 2000). Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of CTL made on or after January 1, 2000, and antidumping cash deposit requirements for this merchandise are no longer necessary.

Entries of subject merchandise made prior to January 1, 2000, will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Reminders

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of

APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 8, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—List of Issues

for CCC:
1. Clerical Errors
for Clayson:
1. Model Match
2. General and Administrative Expenses
3. Quantity Adjustments
4. Hourly Production Rates
5. Overhead Exclusions
6. Clerical Errors
for Dofasco:
No Issues
for MRM:
1. Revocation

[FR Doc. 01–1224 Filed 1–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-to-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative reviews of certain cut-to-length carbon steel plate from Germany.

SUMMARY: On September 7, 2000, the Department of Commerce (''Department'') published the preliminary results of the administrative reviews of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. These reviews cover one manufacturer/exporter. The periods of review (''PORs'') are August 1, 1997 through July 31, 1998, and August 1, 1998 through July 31, 1999.

Based on our analysis of the comments received, we have not made any changes in the margin calculations. Therefore, the final results do not differ from the preliminary results. The final adverse facts available margins for the reviewed firm are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3434 (Bolling), or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Background

The Department published an antidumping duty order on certain cut-to-length carbon steel plate from Germany on August 19, 1993. Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany, 58 FR 44170 (August 19, 1993) (''Antidumping Duty Order''). On August 11, 1998, the Department published a notice of opportunity to request administrative review of this order for the period August 1, 1997 through July 31, 1998. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 63 FR 42821 (August 11, 1998). Novosteel, a Swiss exporter of subject merchandise, timely requested that the Department conduct an administrative review of Novosteel's sales for this period (''97–98 Review''). On September 24, 1998, Novosteel requested that the Department defer the 97–98 Review for a one year period, in accordance with 19 CFR 351.213(c); the Department agreed to this request. See Initiation of Antidumping and Countervailing Duty Administrative Review, Requests for Revocation in Part and Deferral of Administrative Reviews, 63 FR 58009 (October 29, 1998). On August 11, 1999, the Department published a notice of opportunity to request administrative review of this order for the period August 1, 1998 through July 31, 1999. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 64 FR 43649 (August 11, 1999). On August 13, 1999, Novosteel timely requested that the Department conduct an administrative review of Novosteel's U.S. entries for this period (''98–99 Review''). On August 31, 1999, Petitioners also timely requested that the Department conduct an administrative review of Novosteel's U.S. entries for the 98–99 period of review (''POR''). In accordance with section 751(a) of the Act, the Department published in the **Federal Register** notices of initiation of the 97–98 Review and the 98–99 Review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 60161 (November 4, 1999) (97–98); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 53318 (October 1, 1999) (98–99).

On October 4, 1999, the Department issued Novosteel its questionnaire for the 97–98 Review and the 98–99 Review. On December 9, 1999, Novosteel responded to Section A of the Department's questionnaires. In the Section A response, sales documentation demonstrated that the producer of the subject merchandise, Reiner Brach, had knowledge that the subject merchandise was being exported to the United States. *See* Exhibits 3 and 4 of the December 9, 1999 response. Also, on January 7, 2000, Novosteel responded to Sections B and C of the Department's questionnaires. On January 18, 2000, Petitioners submitted a request that the Department terminate the administrative reviews with respect to Novosteel, arguing that a review of Novosteel, a non-producing exporter, would only be appropriate where the supplier did not have knowledge that the merchandise would be exported to the United States. Petitioners argued that Novosteel's supplier, producer Reiner Brach, had knowledge that the merchandise would be sold to the United States and that, thus, the appropriate sales to be reviewed were those made by Reiner Brach to Novosteel. On February 2, 2000, Reiner Brach submitted a letter opposing termination of the administrative review of Novosteel and agreed to become a respondent for these administrative reviews.

Based on the Novosteel's questionnaire responses, the Department determined that Reiner Brach not only was the producer of the subject merchandise, but also had knowledge that the products were

destined for the United States, and that, thus, the sale between Reiner Brach and Novosteel was the appropriate link in the sales chain upon which the Department should be conducting its antidumping analysis regarding these sales of the subject merchandise in the United States during the aforementioned PORs. While the result of this change in focus is that the margin calculated in these reviews will be that of Reiner Brach, rather than of Novosteel, per se, Novosteel affirmatively accepted the change of analytical focus to Reiner Brach, and Petitioners have not disagreed with this approach. Therefore, bearing these factors in mind, and in consideration of the small size and lack of experience of Reiner Brach, in addition to noting that two PORs are at issue, the Department determined that it was proper use of its discretion to conduct administrative reviews for the 97–98 and 98–99 PORs of Reiner Brach's sales.

On August 31, 2000, the Department issued the preliminary results of these administrative reviews. See Certain Cut-to-Length Carbon Steel Plate from Germany: Preliminary Results of Antidumping Duty Administrative Reviews, 65 FR 54205 (September 7, 2000) (''German Plate''). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The products covered by these administrative reviews constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Crib, Assistant Secretary for Import Administration, dated January 5, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memorandum*, is accessible in B–099 and on the Web at ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for these proceedings for our analysis of Reiner Brach's entries. For a discussion of our determination with respect to this matter, see the facts available section of the *Decision Memorandum*, accessible in B–099 and on the Web at ia.ita.doc.gov.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have not made any changes in the margin calculations. See ''*Decision Memorandum*,'' accessible in B–099 and on the Web at ia.ita.doc.gov.

Final Results of the Reviews

We determine the following margins for the periods August 1, 1997 through July 31, 1998 and August 1, 1998 through July 31, 1999:

CERTAIN CUT-TO-LENGTH CARBON STEEL PLATE

Producer/ manufacturer/exporter	Margin (percent)
Reiner Brach (97–98 Review) ..	36.00
Reiner Brach (98–99 Review) ..	36.00

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of cut-to-length plate from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 36.00 percent. This rate is the ''all others'' rates from the LTFV investigation. See Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany, 58 FR 44170 (August 19, 1993) (''Antidumping Duty Order'').

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 5, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix

1. Respondent Cooperation
2. Request to Extend Final and Submit Additional Data
3. The Application of Total Adverse Facts Available
4. The Facts Available Margin

[FR Doc. 01–1225 Filed 1–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Public Hearing on Establishment of Import Restrictions on Certain Steel Products From Ukraine to the United States

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 16, 2001.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the public hearing and/or public comments, contact Lesley Stagliano at (202) 482–0190. All other questions should be directed to Edward Yang at (202) 482–0406.

SUPPLEMENTARY INFORMATION: On June 1, 1990, pursuant to Title IV of the Trade Act of 1974 (the Trade Act), the Governments of the United States of America and Union of Soviet Socialist Republics entered into the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics. On May 6, 1992, this agreement became effective between the United States of America and Ukraine (the 1992 Agreement). Article XI of the 1992 Agreement provides that the Parties will consult with a view toward finding means of remedying or preventing actual or threatened market disruption, and it authorizes the Parties to take action, including the imposition of import restrictions, to achieve this goal.

In January 2001, the United States Department of Commerce and the Ministry of Economy of Ukraine entered into negotiations and consultations pursuant to Article XI of the Agreement on Trade Relations Between the United States of America and Ukraine. In these negotiations, the Parties are considering whether the conditions of Article XI have been met with respect to U.S. imports of certain steel products from Ukraine and, if so, what action should be taken.

Pursuant to Article XI, the United States is considering establishing import restrictions on Ukrainian exports to the United States of the following 21 steel products:

1. Steel Concrete Reinforcing Bar (Re-Bar)
2. Hot-Rolled Carbon Quality Steel Products
3. Cold-Rolled Carbon Quality Steel Products
4. Hot-Rolled Steel Stainless and Alloy Products
5. Cold-Rolled Stainless, Alloy and Other Carbon Steel Products
6. Galvanized Sheet Products
7. Other Metallic Coated Flat-Rolled Products
8. Rails
9. Electrical Sheet Products
10. Heavy Structural Shapes
11. Hot-Rolled Bars
12. Hot-Rolled Light Shapes
13. Cold-Finished Bars
14. Certain Tin Mill Products Pipe and Tube Products
15. Wire Rod Products
16. Tool Steel
17. Drawn Wire
18. Wheels and Axles
19. Fabricated Structural Shapes
20. Semifinished Steel Products
21. Pig Iron

Each category of steel would have a separate export limit. In addition to the issuance of export licenses by the Ministry of Economy of Ukraine, the United States would establish a border enforcement mechanism to ensure compliance with the export limits. The border mechanism will be in the form of denial of entry for any shipment of steel, covered by the categories listed above, which exceeds the limits or lacks the required documents.

Section 125(c) of the Trade Act (19 U.S.C. 2135(c)) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to the Trade Act, modifies any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States.

Section 125(f) of the Trade Act (19 U.S.C. 2135(f)) requires the President to provide the opportunity for interested parties to present views at a public hearing prior to taking action pursuant to section 125(b), (c), or (d) of the Trade Act (19 U.S.C. 2135(b), (c), or (d)). Such an opportunity is being provided by scheduling such a hearing for Wednesday, January 17, 2001, at the United States Department of Commerce. If the consultations and negotiations with the Ministry of Economy of Ukraine result in a tentative agreement, the Department will publish the proposed agreement on its Import Administration website (http://ia.ita.doc.gov) no later than 12:00 p.m. on Tuesday, January 16, 2001, and conduct the hearing on January 17, 2001.

Notice of Public Hearing: Pursuant to section 125(f) of the Trade Act of 1974 (19 U.S.C. 2135(f)), the International Trade Administration of the Department of Commerce, has scheduled a public hearing beginning at 10 a.m., on January 17, 2001, at Room 1412 of the Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC.

Requests to Present Oral Testimony: Parties wishing to testify orally at the hearing must provide written notification of their intention not later than 5 p.m., January 16, 2001 to Troy H. Cribb, Assistant Secretary for Import Administration: In re Public Hearing on Establishment of Import Restrictions on Certain Steel Products From Ukraine to the United States, Room 1870, Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; (3) a list of issues to be addressed; and (4), if applicable, any request for an extension of the time limitation on the oral presentation. This notification may be submitted via facsimile to Vicki Sullivan at (202) 273–0957. Those parties presenting oral testimony must also submit a written brief, in 20 copies, not later than 10 a.m., January 18, 2001, to the above-mentioned address.

Hearing presentations should be limited to no more than five minutes to allow for possible questions from the Chairman and the panel. Additional time for oral presentations may be granted as time and the number of participants permit. Any business proprietary material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a public summary thereof.

Written Briefs: Those persons not wishing to participate in the hearing may submit written comments, in 20 typed copies, not later than 10 a.m., January 18, 2001, to Troy H. Cribb, Assistant Secretary for Import Administration: In re Public Hearing on Establishment of Import Restrictions on Certain Steel Products From Ukraine to the United States, Room 1870, Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC. Comments should state clearly the position taken and describe with particularity the evidence supporting that position. Any business proprietary material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a public summary thereof. Public submissions will be available for public inspection at the Import Administration Central Records Unit. An appointment to review the file may be made by contacting Thomas Harley at (202) 482–1248.

Dated: January 10, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–1247 Filed 1–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010901E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The 76th meeting of the Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will convene January 30 through February 1, 2001, in Honolulu, HI.

DATES: The SSC meeting will be held from 9 a.m. to 5 p.m. on January 30 and from 8:30 a.m. to 5 p.m. on January 31 and February 1, 2001.

ADDRESS: The 76th SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, January 30, 2001, 9 a.m.

1. Precious corals fisheries
   A. Status of 2000 framework adjustment regarding Hawaiian Islands exploratory area quota increase
   B. Growth rates of gold coral
   C. November research surveys
   D. Summary of Draft Environmental Impact Statement (DEIS)
   E. Plan Team recommendations
2. Crustaceans fisheries (Northwestern Hawaiian Islands [NWHI] lobsters)
   A. Status of framework closure of fishery
   B. Status of spring research tagging charter
   C. Status of plans for 5–year review/technical review panel
   D. Status of DEIS
3. Bottomfish fisheries
   A. Status of the NWHI stocks
   B. Status of litigation
   C. Status of DEIS

Wednesday, January 31, 2001, 8:30 a.m.

4. Pelagic fisheries
   A. 3rd quarter 2000 Hawaii and American Samoa longline fishery reports
   Exclusion of purse seiners from provisions of 50 nm closed area around American Samoa
   B. Turtle management
   (1) Pelagic EIS: NMFS preferred alternative
   (2) NMFS Biological opinion, recommended measures
   (3) Turtle Mitigation Working Group
   (4) Atlantic Turtle Working Group (TWG)
   (5) Turtle Recovery Plan
   (6) Criteria for de-listing species under Endangered Species Act (ESA)
   C. Shark management
   Amendment 9 blue shark quota following state & federal finning bans
   D. Seabird management
   U.S. Fish & Wildlife (FWS) Biological opinion on short-tailed albatross and Council recommended mitigation regime
   E. Kingman Reef Environmental Assessment(EA)
   F. Hawaii offshore handline fishery and gear conflicts at Cross seamount
   G. Other issues

Thursday, February 1, 2001, 8:30 a.m.

5. Ecosystem and Habitat
   A. Draft Coral Reef Ecosystem FMP/DEIS
   (1) Aspects for further discussion
   (2) Review of (initial) public/agency comments
   B. Impacts of Clinton's Executive Order (EO) on NWHI fisheries
   C. Marine/wildlife inventory at remote atolls
   D. Other issues
6. De-listing of protected species (green sea turtle)/allowing for cultural take
7. Other business
8. Schedule for 2001

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: January 10, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–1215 Filed 1–12–01; 8:45 am]

BILLING CODE: 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Policy Guidance on Title VI's Prohibition Against National Origin Discrimination as it Affects Limited English Proficient Persons

AGENCY: Corporation for National and Community Service.

ACTION: Notice of policy guidance.

SUMMARY: The Corporation for National and Community Service (Corporation) is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. This policy clarifies the existing responsibilities of Corporation grantees to take reasonable steps to provide access to their programs and activities for persons with limited English proficiency. This document provides an opportunity for public comment. The Corporation will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

DATES: This guidance is effective immediately. Comments must be submitted on or before March 19, 2001.

ADDRESSES: Interested persons should submit written comments to Ms. Wilsie Y. Minor, Associate General Counsel, Corporation for National Service, 1201 New York Ave., NW., Washington, DC 20525. Comments may also be submitted by facsimile at 202–565–2796.

FOR FURTHER INFORMATION CONTACT: Wilsie Y. Minor, Corporation for National Service, 1201 New York Ave., NW., Washington, DC 20525. Telephone 202–606–5000, ext. 129; TDD: 202–565–2799. Arrangements to receive the policy in an alternative format may be made by contacting Wilsie Y. Minor.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the Corporation for National and Community Service (Corporation) (''grantees''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates the Corporation's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, grantees must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those grantees provide, free of charge.

The text of the complete guidance document follows:

Providing Access to Limited-English Proficient (LEP) Persons to the Programs and Activities of Grantees of the Corporation for National Service

A. Overview

1. What Does the Document Do?

This policy guidance does not create new obligations but rather clarifies the existing responsibilities of Corporation for National Service (hereinafter Corporation) grantees to take reasonable steps to provide access to their programs and activities for persons with limited English proficiency (LEP). This document:

(a) Discusses the policies, procedures and other steps that Corporation grantees can take to provide access by LEP persons to national service programs and to other programs and activities of our grantees.

(b) Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI of the Civil Rights Act of 1964 or with Executive Order 13166.

(c) Provides that the Corporation's Equal Opportunity (EO) Office will determine compliance on a case-by-case basis, and that assessments will take into account:

- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and
- Total resources available to the recipient.

(d) Provides that small grantees and those with limited resources will have flexibility in achieving compliance.

(e) Applies to all beneficiaries of our grantees' programs or activities.

In this document, ''beneficiary'' refers to:

- Clients, former clients, and client applicants of a grantee's programs or activities;
- Members of the public who receive or are eligible to receive benefits or services from our grantees; and

Participants, former participants, and participant applicants for positions as a service member or volunteer.

Our grantees' programs or activities include:

- Federally assisted programs such as AmeriCorps*State/National;
- Part-time programs such as Foster Grandparents or participants in Learn and Serve America; and
- Part federally-conducted/part federally-assisted programs such as AmeriCorps*VISTA or AmeriCorps*NCCC.

Our grantees' programs or activities include not merely the national service programs operated by the grantees, but in most cases they include all operations of the organization. (See Legal Underpinnings below for an explanation of a grantee's ''programs and activities''.)

2. Why Do Our Grantees Need To Ensure Their Programs or Activities Provide Services to LEP Persons?

Grantees must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964 which prohibits denial of services to and other forms of discrimination against persons on the basis of national origin, color, and race. Often, language identifies national origin. Language barriers may be rooted in intentional discrimination. Most frequently, failure to provide language assistance to LEP persons on the basis of national origin leads to actions having the effect of discrimination. Such actions have consistently been held to violate Title VI. (See Legal Underpinnings below for more information on Title VI, and on Executive Order 13166 which clarifies Title VI in the LEP context.)

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of its residents. Of the U.S. residents who speak languages other than English at home, the 1990 Census reports that 57% above the age of four speak English ''well to very well.'' However, the U.S. is also home to millions of national origin minority individuals who are ''limited English proficient'' (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively with teachers and education officials, health care providers, social service agency staff, police and emergency workers, officials of public benefit programs, etc.

Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information. Federal agencies have found that persons who lack proficiency in English frequently are unable to obtain basic knowledge of how to access various benefits and services for which they are eligible. Agencies have also found that LEP persons are sometimes exploited by unscrupulous persons or unwittingly are pawns in frauds against benefit programs.

3. What Is Our Policy on Ensuring Our Grantees' Programs or Activities Provide Access to Their Services to LEP Persons?

It is our policy to ensure that our grantees fully comply with the requirements of the various civil rights acts and requirements applicable to federal grantees, including Title VI of the Civil Rights Act of 1964 and Executive Order 13166. One aspect of compliance is to ensure that our grantees take reasonable steps to provide meaningful access for LEP persons to their program or activities, including provision of language interpretive services within the parameters set forth in this policy document.

B. Legal Underpinnings of This Policy

1. What Are the Basic Requirements Under Title VI in the LEP Context?

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000–d) prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance. Recipients of federal financial assistance (referred to as ''grantees'' in this policy) may not, on the basis of race, color, or national origin:

- Provide services, financial aid, or other benefits that are different or provide them in a different manner;
- Restrict an individual's enjoyment of an advantage or privilege enjoyed by others;
- Deny an individual the right to participate in federally assisted programs; and
- Defeat or substantially impair the objectives of federally assisted programs.

A grantee whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally assisted program or activity on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, grantees must take reasonable steps to ensure that LEP persons who are eligible for their programs or activities have access to the services they provide. The most important step in meeting this obligation is for grantees to provide the language assistance necessary to ensure such access and to do so at no cost to the LEP person.

2. What Does Executive Order 13166 Require in the LEP Context? Does It Impose Requirements Beyond Those of Title VI?

On August 11, 2000, the President issued Executive Order 13166 entitled ''Improving Access to Services for Persons with Limited English Proficiency.'' The purpose of this Executive Order is to eliminate, to the maximum extent possible, limited English proficiency as an artificial barrier to full and meaningful participation by beneficiaries in federally assisted programs and activities. It clarifies existing Title VI responsibilities for grantees regarding access for LEP persons, but does not impose additional requirements. On August 16, 2000, the Department of Justice issued policy guidance which may be found at 65 Fed.Reg. 50123 or *www.usdoj.gov/crt/cor.*

3. Who Are Grantees? What Is Federal Financial Assistance?

In this document, a grantee is any entity receiving federal financial assistance from us to operate a federally assisted program. Grantees include, but are not limited to, the State Commissions, AmeriCorps*VISTA and Senior Corps sponsors, State Educational Agencies, and AmeriCorps*NCCC projects. Grantees also include other direct recipients, service sites and intermediary service programs (entities between the primary grantee and the service sites).

For example, the Corporation funds a grant to a state agency. The state agency provides funding to non-profits or local governments throughout the state. These organizations place volunteers with local organizations. Each level is a grantee for civil rights purposes.

Federal financial assistance includes funds, property or services, including technical assistance, provided to non-federal organizations to promote activities serving the public interest. For civil rights purposes, it also includes aid that enhances the ability to improve or expand allocation of a grantee's own resources. This may be through the services of, or training by, service members or volunteers or federal personnel at no cost or at less than full market value. Therefore, assignment of service members or volunteers (including VISTA or NCCC)—whether supported, in whole or in part, under a Corporation grant or through an Education Award Program—is a form of federal financial assistance.

The definition of the ''program or activity'' receiving federal financial assistance is quite broad and for most organizations extends beyond their national service program. For example, it includes all operations of a department, agency or district of a State or local government; a college, university, local education agency; and an entire corporation or private organization which is principally engaged in providing education, health care, housing, social services, or parks and recreation when any part of these entities receives federal financial assistance.

A grantee may receive financial assistance directly from us or through another grantee. A grantee may be a Native American tribe. While tribes have sovereign immunity in many respects, when they receive federal financial assistance, by the terms of the grant, they agree to comply with the civil rights requirements in the operation of their national service programs.

4. Who Are Beneficiaries? Why Are They Beneficiaries? What Rights Do They Have?

Service members and volunteers are beneficiaries of federally assisted programs. They receive a stipend, an allowance for living expenses, an education award or post-service stipend, child care or child care allowance, and/or health care coverage, or cost reimbursements paid in whole or in part, directly or indirectly, by the Corporation. Former service members or volunteers and service member and volunteer applicants are also beneficiaries as it relates to their connection to a national service program funded by the Corporation.

The persons served by the service members and volunteers (including AmeriCorps*NCCC members) are beneficiaries of federally assisted programs. They receive benefits, be it tutoring, housing, employment, or substance abuse counseling, immunizations, personal living assistance, etc. which they would not have but for the national service programs funded in whole or in part by the Corporation. Persons previously served or applying to be served by service members and volunteers are also beneficiaries.

The persons served, eligible to be served, or previously served by other programs and activities of the grantee are also beneficiaries of federally assisted programs. They receive benefits from a recipient of federal financial assistance, so by definition they are beneficiaries. Similarly, members of the public who receive or are eligible to receive benefits or services from our grantees are beneficiaries.

All beneficiaries of federal financial assistance have the right not to be subjected to prohibited discrimination. In the LEP context, this means they have the right to have the grantee take reasonable steps to provide meaningful access to its programs and activities to enable LEP persons to participate. All beneficiaries also have the right to file a discrimination complaint with the Corporation if he or she believes discrimination has occurred.

5. Can We Presume That Service Members or Volunteers Must Be Proficient in English?

No. Programs should assess whether individuals with limited English proficiency can effectively serve in their programs with or without language assistance. Programs may not deny access on the basis of lack of English proficiency unless providing language assistance would fundamentally alter the nature of their program or unreasonably burden the organization. There may be programs where the member or volunteer must be proficient in English, but in some of the Corporation's programs such as Senior Companions, limited English proficiency may not hinder the ability to serve. Individuals who speak the language of one of the minority groups within a community, even when they are LEP, may effectively help to serve the community.

6. If a Grantee Is Covered by a State or Local ''English-only'' Law, Must It Still Comply With the Title VI Obligation and Corporation Guidance Interpreting That Obligation?

Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel grantees to violate Title VI. For instance, given our constitutional structure, State or local ''English-only'' laws do not relieve an entity that receives federal funding or other financial assistance from its responsibilities under federal anti-discrimination laws. Entities in States and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

C. LEP Requirements

1. What Are the Basic Requirements Under Title VI for LEP Persons?

The basic requirement is to provide meaningful access for LEP persons to a grantee's programs and activities. There is no ''one size fits all'' solution for providing meaningful access, and our assessment of a grantee's compliance will be made on a case-by-case basis. A grantee will have considerable flexibility in determining precisely how to fulfill this obligation, and we will focus on the grantee's end result. The key to providing meaningful access is to ensure that the grantee and the LEP person can communicate effectively. Effective communication means the LEP person is:

- Able to understand the services and benefits available;
- Able to receive those benefits for which he or she is eligible; and
- Able to effectively communicate the relevant circumstances of his or her situation to the service provider.

The type of language assistance provided depends on a variety of factors, including:

- Number or proportion of LEP individuals in the service area;
- Frequency of contact with LEP language groups;
- Nature and importance of the program or activity; and

total resources available to the recipient.

2. What Are the Basic Elements of an Effective Language Assistance Program?

Effective language assistance programs usually contain four elements:

- Assessment;
- Comprehensive written policy;
- Staff training; and
- Monitoring.

Failure to incorporate or implement one or more elements does not necessarily mean noncompliance with Title VI, and we will focus on whether meaningful access is achieved. Further, if implementation of one or more accessibility options would be so financially burdensome as to defeat the legitimate objectives of a grantee's program, the grantee will not be found in noncompliance with Title VI.

3. How Does a Grantee Assess the Language Needs of the Affected Population (the First Key for Ensuring Meaningful Access to LEP Persons)?

A grantee assesses language needs by considering a variety of factors, including the total resources and size of the recipient/covered entity, the number or proportion of the eligible LEP population it serves, the nature and importance of the program or service, including the objectives of the program, the total resources available to the recipient/covered entity, and the frequency with which particular languages are encountered and the frequency with which LEP persons come into contact with the program.

Assessing the number or proportion of the eligible LEP population may be done through review of census data, client utilization data from client files, data from local school systems and community agencies and organizations, or other sources. Grantees are encouraged to identify local organizations that serve the LEP populations in their community. Collaborations with these organizations may not only assist in assessing language needs, but may improve outreach to and recruitment from the communities they serve.

4. What Should Be Included in a Comprehensive Written Policy and Procedures on Language Access (the Second Key for Ensuring Meaningful Access to LEP Persons)?

Presuming the assessment reveals more than merely a few LEP persons being served or eligible to be served or likely to be directly affected by the program, a grantee should develop and implement a language assistance policy, including implementation procedures. The policy should be comprehensive and should be in writing. It should address periodic staff training and monitoring the effectiveness of the program. Ideally, a range of oral language assistance options should be included, and it should provide for translation of vital written materials in certain circumstances. (See D.2.)

The implementation procedures should be comprehensive, should be in writing, and should include:

- How to identify and assess the language needs of LEP persons, and to record this information in individual client files, as applicable;
- How to notify LEP persons, in a language they can understand, of their right to receive free language assistance;
- Identify where in the program or activity language assistance is likely to be needed;
- Identify what resources are likely to be needed, their location, and their availability;
- How to access these resources to provide language assistance in a timely manner.

5. How Does a Grantee Effectively Train Its Staff Regarding the Policy and Procedures (the Third Key for Ensuring Meaningful Access to LEP Persons)?

A grantee must disseminate its policy to all employees, especially to those likely to have contact with LEP persons. It must also periodically train its employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. Training should be part of the orientation for new employees, and all employees in client contact positions need to receive additional training. For AmeriCorps*State/National grantees, State Commissions request Professional Development and Training Funds (PDAT) funds to provide professional development and training for AmeriCorps staff. To support the LEP initiatives, funds might be used for activities that train AmeriCorps staff about best practices for working with LEP members, and for building the language capacity of LEP AmeriCorps members.

6. How Does a Grantee Effectively Monitor and Evaluate Its Language Assistance Program To Ensure It Provides Meaningful Access to LEP Persons (the Fourth Key for Ensuring Meaningful Access to LEP Persons)?

A grantee should monitor its language assistance program at least annually. As part of the monitoring, the grantee should seek feedback from clients and advocates. The monitoring and evaluation should:

- Assess the current LEP makeup of its service area and frequency of contact with LEP language groups;
- Assess the current communication needs of LEP applicants and clients;
- Determine whether existing assistance is meeting the needs of such persons;
- Evaluate whether staff is knowledgeable about the policy and procedures and how to implement them; and
- Determine whether sources of and arrangements for assistance are still current and viable.

D. Specific LEP Implementation Methods, Their Pros and Cons

1. What Does a Grantee Need To Know About Providing Trained and Competent Interpreters?

Meaningful access to programs and activities includes providing trained and competent interpreters and other oral language assistance services in a timely manner. This may include taking some or all of the following steps:

- Bilingual Staff—Hire bilingual staff for critical direct client contact positions (such as emergency room intake personnel). Bilingual staff must be trained and must demonstrate competence as interpreters.
- Staff Interpreters—Hire paid staff interpreters, especially when there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.
- Contract Interpreters—Use contract interpreters, especially when there is an infrequent need for interpreting services, when less common LEP language groups are in the service areas, or when there is a need to supplement in-house capabilities on an as-needed basis. Contract interpreters must be readily available and competent.
- Community Volunteers—Use community volunteers. While volunteers may be cost-effective, to use them effectively, grantees must enter into formal arrangements for interpreting services with community organizations so the organizations are not subjected to *ad hoc* requests for assistance. Volunteers must be competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service. (**NOTE:** Except in the conditions explained at the end of this section, use of family member volunteers, especially children, is never appropriate, and, even if a child speaks English, the parent must be able to fully understand in order to provide informed consent for medical services or participation in program activities.)
- Telephone Interpreter Lines—Utilize a telephone interpreter service line, as a supplemental system or when a grantee encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, the interpreters may not be familiar with the terminology peculiar to the particular program or service. (**Note:** this should not be the only language assistance option used, except where other language assistance options are unavailable (*e.g.*, in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).)

In order to provide effective services to LEP persons, a grantee must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful, but competency requires more than self-identification as bilingual. The competency requirement contemplates:

- Demonstrated proficiency in both English and the other language;
- Orientation and training that includes the skills and ethics of interpreting (*e.g.* issues of confidentiality);
- Fundamental knowledge in both languages of any specialized terms or concepts peculiar to the grantee's program or activity;
- Sensitivity to the LEP person's culture; and
- A demonstrated ability to accurately convey information in both languages.

A grantee may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening, consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If, after a grantee informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the grantee may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The grantee should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the grantee should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

2. What Does a Grantee Need to Know About Providing Translation of Written Materials?

An effective language assistance program may include providing translation of certain written materials. For instance, written materials routinely provided in English to applicants,

clients and the public should be available in regularly encountered languages other than English. Spanish, Chinese, Vietnamese, Tagalog, and Korean are the major languages spoken by non-English speaking persons in the U.S. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the grantee's program. Examples of vital documents include:

- Applications for benefits or services;
- Consent forms;
- Documents containing important information regarding participation in a program (such as descriptions of eligibility for tutoring, assignment of a Senior Companion, instructions for filing for reimbursement of expenses, application for health care or child care benefits);
- Notices pertaining to the reduction, denial or termination of services or benefits, or to the right to appeal such actions or that require a response from beneficiaries;
- The member contract, job description, and an explanation of the Grievance Procedure;
- Notices advising LEP persons of the availability of free language assistance; and
- Other outreach materials.

In contrast, documents prepared for a selected portion of the public, such as laws, regulations, and detailed policy manuals, may not be a priority for translation and perhaps only short summaries of the contents are needed.

When making decisions about doing written translation of documents, it is important to consider the level of literacy in the ethnic community's first language. If a document is translated in writing for a community with high rates of first language illiteracy, access for LEP individuals may still be denied. Meaningful access may require making the information available in an oral format.

It is important to ensure that the person translating the materials is well qualified. Verbatim translations may not accurately or appropriately convey the substance of what is contained in the written materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons. Recent technological advances have made it easier to store translated documents. It is advisable to maintain a data base of translated documents, to avoid the cost and time of repeated translations of the same document.

3. Is Corporation Funding Available to Assist With the Cost of Translation?

The cost of translation may be an allowable cost of a grant.

Grant funds are not available for AmeriCorps*NCCC project sponsors.

4. What Does a Grantee Need to Know About Effectively Notifying LEP Persons of Their Right to Language Assistance and of the Availability of Language Assistance Free of Charge?

For a language assistance program to be effective, LEP persons need to know they have the right to receive language assistance, and that the language assistance will be provided at no charge to them. Effective notification methods include, but are not limited to:

- Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services.
- Including statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.
- Providing this information to advocacy organizations, faith-based organizations, and societies providing services to LEP persons in the community.

5. What Other Innovative Methods Are There To Provide Meaningful Access to LEP Persons?

- Simultaneous Translation—This allows a grantee and client to communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services. The interpreter can be miles away, and thereby reduces delays since the interpreter does not have to travel to the grantee's facility. In addition, a grantee that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.
- Language Banks—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs.
- Language Support Office—This is an office that tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.
- Multicultural Delivery Project—This is a project that finds interpreters for immigrants and other LEP persons. It uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.
- Pamphlets—The pamphlets are intended to facilitate basic communication between clients and staff as they await receipt of interpreter services. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

E. Compliance Monitoring

1. By What Mechanisms Does the Corporation Ensure its Grantees Comply With These LEP Requirements?

The Corporation uses or may use a variety of mechanisms to monitor compliance with civil rights requirements, including LEP requirements, by its grantees. These include review of grant application submissions, pre-award and/or post-award compliance reviews (desk audit or on-site), discrimination complaint investigations, and information gathered during outreach and technical assistance activities. Other federal agencies often provide far more monetary federal assistance to its grantees than does the Corporation. Each federal agency extending federal financial assistance maintains mechanisms to ensure compliance with Title VI and its implementing regulations. Compliance determinations by larger federal agencies are given great weight by the Corporation, and grantees receiving substantial federal financial assistance from agencies such as the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of

Veteran's Affairs, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development should make sure to be familiar with the Title VI enforcement mechanisms of all federal agencies. If the Corporation receives a complaint alleging failure to provide effective access to LEP persons, we may refer it for processing to a larger federal agency who also funds the grantee. However, under these circumstances, we maintain our authority to independently determine a grantee's compliance.

2. What Can Happen to a Grantee if Its Actions Are Determined by the Corporation's EO Office To Be Discriminatory?

The Corporation is obligated to take appropriate action regarding any grantee that does not comply with the civil rights laws, implementing regulations and policies. If the Equal Opportunity Director finds that a grantee has discriminated, it is in noncompliance with the civil rights laws. If the grantee refuses to voluntarily correct the noncompliance, the Corporation may pursue a number of options, including suspension, termination or the discontinuation of aid. The ultimate sanction may be termination of all federal funding to the program or activity.

However, the purpose of the civil rights laws is to achieve compliance with the laws, not to terminate federal funding to programs. Therefore, we make great efforts to encourage our grantees to voluntarily comply with the laws.

3. What Responsibilities and Liabilities Do Primary Grantees Have When a Subgrantee Discriminates?

A primary grantee extends federal financial assistance to subgrantees. A primary grantee has continuing oversight responsibilities for ensuring the operations of each of its subgrantees comply with the civil rights laws. When reviewing grant proposals, the primary grantee should consider whether applicants for subgrants have identified a means for providing access to LEP persons. During the term of the grant, the primary grantee should monitor the provision of meaningful access in the same manner that it monitors compliance with other grant provisions.

When a beneficiary claims a subgrantee has discriminated, the primary grantee should take action to bring the subgrantee into voluntary compliance, and take appropriate action when a subgrantee does not voluntarily comply. In cases of noncompliance, appropriate action may include but is not limited to:

- Providing relief to the beneficiary;
- Submitting reports of any internal investigation to our EO Director for review;
- Initiating action to terminate, suspend, or refuse to grant federal financial assistance to the discriminatory subgrantee; and
- Notifying our EO Director of the subgrantee's noncompliant status so our EO Office may take appropriate action, including notifying other federal granting agencies.

4. May Our EO Director Restore Compliant Status When a Grantee Remedies Violations?

Yes. Our EO Director may restore a grantee to compliant status if it satisfies terms and conditions established by the Corporation, or if it otherwise brings itself into compliance and provides reasonable assurance of future compliance.

Examples of Promising Practices That Provide Access to LEP Persons

The Association of Farmworker Opportunity Programs AmeriCorps program recruits former farmworkers to serve as AmeriCorps members. Most members are bilingual, and many are LEP. Members are encouraged to take English as a Second Language classes as a part of their member development plan. The program provides pesticide safety training to farmworkers and their families. Members conduct the training in Spanish.

The program uses the following techniques to ensure that members understand their terms of service and benefits:

- ☐ Recruiting posters, flyers and the Member Service Contract are provided in Spanish.
- ☐ AmeriCorps project staff are bilingual (Spanish/English).
- ☐ Orientation training is provided in Spanish and English.
- ☐ Conference calls are held in Spanish when all members speak Spanish.
- ☐ Two bilingual second-year members led a team of members that communicated about their service projects exclusively in Spanish.
- ☐ Members had to be bilingual, but did not require English as the first language.
- ☐ Recruitment took place at the local field office level, and candidates were often from the farmworker community.

The Parents Making a Difference AmericCorps program recruits a diverse corps including many bilingual members to provide outreach to parents in low-income school communities. Members translate at parent-teacher conferences, call parents about absent children, and organize a wide variety of parent-oriented outreach and educational activities.

''Classroom in the Kitchen'' gives parents tips on how to support the educational growth of their children in their homes. Diverse language abilities and cultural knowledge is extremely important in this regard. The range of English proficiency is varied, allowing members to help each other, and communication about program activities is largely bilingual.

The program provides English-Second-Language classes for LEP AmericCorps members as part of their Member Development Plan. (This language support is required by the Rhode Island Commission for all AmericCorps programs, in the same vein as the GED training requirement.)

The Temple University Center for Intergenerational Learning, Students Helping in the Naturalization of Elders (SHINE) program. SHINE is a national, multicultural, intergenerational service-learning initiative in five cities. College students provide language, literacy, and citizenship tutoring to elderly immigrants and refugees. Currently, students serve as coaches in ESL/citizenship classes or as tutors in community centers, temples, churches, housing developments, and ethnic organizations.

Northeastern University, San Francisco State University, Loyola University, Florida International University and Temple University are involved with SHINE. Students participate through courses, work study, and campus volunteer organizations. SHINE program coordinators partner with local community organizations; recruit, train, place, and monitor students at community sites; and provide support and technical assistance.

Since 1997, more than 60 faculty from education, social work, anthropology, political science, modern languages, sociology, English, Latino, and Asian studies have offered SHINE as a service-learning option in their courses. Over 1,000 students provided over 25,000 hours of instruction to 3,500 older learners at 37 sites in Boston, San Francisco, Chicago, Miami, and Philadelphia.

The Albuquerque Senior Companion Program (SCP), sponsored by the City of Albuquerque, Department of Senior Affairs, serves a diverse senior population with Native American,

Hispanic, and Anglo volunteers. Senior Companions assist the frail elderly with household tasks and companionship.

Ten of its volunteer stations are located on Pueblos. Each Pueblo has its own language. The program works closely with its site managers/supervisors who are bilingual employees of the individual Pueblo governments and generally are residents of the Pueblos. Senior Companions serve on their own Pueblos and walk to the homes of their clients.

Due to language and cultural barriers these supervisors assist with all areas of the program. They are familiar with the population in their individual Pueblos and use this knowledge to assist with recruitment, placement, and training. Each Pueblo celebrates ''Days of Feast'' separately. In order to honor individual feasts, the program has adjusted the ''leave time'' for Pueblo volunteers. Each volunteer is given paid leave to celebrate his or her Pueblo's feast. This is one of the ways the program remains culturally sensitive.

ACCION International, a VISTA project sponsor, is a nonprofit that fights poverty through microlending. ACCION Chicago did outreach to home-based businesses that rarely have access to capital. A VISTA found that many of the women make ends meet through programs such as Mary Kay cosmetics. The VISTA worked with the ACCION loan officer to develop a loan product specifically for these women and has organized bilingual information sessions throughout Chicago neighborhoods.

Bring New Jersey Together is an AmeriCorps program in Jersey City, New Jersey that seeks to bridge the cultural and linguistic barriers separating new Americans from the rest of the community. AmeriCorps members serve LEP community members by translating documents and escorting them to places such as medical appointments, the grocery stores, or anywhere else where a translator may be necessary. The primary languages of the program are Spanish, Russian, and Vietnamese, but also Albanian, Creole, Indian languages, and others depending on the influx of refugees.

The New Jersey Commission built a partnership with the International Institute of New Jersey, which had provided services to the immigrant community for fifty years, to establish an AmeriCorps program that served the needs of the community. The best practice aspect of this example is that program was designed in partnership with an established organization instead of starting a brand new AmeriCorps project to address this issue.

The Honolulu Chinese Citizenship Tutorial Program is a service-learning project site in the *Champus Compact National Center for Community Colleges ''2+4=Service on Common Ground''.* The University of Hawai'i at Monoa's College of Social Sciences collaborated with the Kapl'olani Community College, Chaminade University, the Chinese Community Action Coalition and Child and Family Service.

Local bilingual college students serve as tutors (during a 10-week session) for Chinese immigrants to help them pass their citizenship exams. The immigrants are recruits by visiting adult education classes, through Chinese radio programs, flyers, and Chinese language newspapers. The Chinese Community Action Coalition provides the curriculum and resources such as Scrabble, books, word-picture matching games, and card games for constructing simple English sentences.

The tutorial sessions focus on passing the INS exam and conversational English. Many of the immigrants are senior citizens. The classes are held in Chinatown. Since the project began, about 1,000 immigrants and refugees have enrolled. Over 300 students have participated as tutors and approximately one-third of the Chinese immigrants became citizens.

Transitional House, Santa Barbara, C.A., is a facility that primarily serves homeless Hispanic women. The services are tailored to meet the needs of each family to help women and their children move from homelessness and unemployment to employment and permanent housing. The VISTAs assigned to the project are bilingual. The clientele is 60% monolingual Spanish speakers.

The VISTAs are creating a Career Development Curriculum that is fully translated into Spanish and members host seminars about immigration and consumer credit counseling services. There was a need to improve communication with clients. One of the VISTAs developed ''halfsheets'', one side in Spanish, the other in English, that explain the services offered by Transition House.

The VISTAs are responsible for placement of children in daycare to enable parents to work. They accompany families to childcare providers to assist with translation and to help make the families feel at ease with placing their children in childcare.

Dated: January 9, 2001.

Wendy Zenker,

Chief Operating Officer, Corporation for National and Community Service.

[FR Doc. 01–1171 Filed 1–12–01; 8:45 am]

BILLING CODE 6050–28–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9 a.m., February 13, 2001.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board (''Board'') will convene the fourteenth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plan for the Board's Recommendations 95–2, Integrated Safety Management (''ISM''). Specific topics will include the status of ISM implementation in the DOE complex and key actions at DOE Headquarters to fully implement ISM. The status of implementing Recommendation 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight) will also be presented. Specific matters related to Recommendation 98–1 will include the status of the Corrective Action Management team, the corrective action tracking system, and the implementation of issues identified during the Recommendation 98–1 verification review. Finally, the status of implementing Recommendation 2000–2, Configuration Management, Vital Safety Systems, will be discussed. Topics will include the Recommendation 2000–2 Executive Team membership, roles and responsibilities, as well as the status of commitments in the Recommendation 2000–2 Implementation Plan.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and

otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: January 10, 2001.

John T. Conway,

Chairman.

[FR Doc. 01–1341 Filed 1–11–01; 2:12 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (DOE).

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 19, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 10, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Education Research and Improvement

Type of Review: Extension.

Title: Standards for Evaluation of the Performance of OERI Grants, Cooperative Agreements, and Contracts.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: P.L. 103–227 reauthorized the Office of Educational Research and Improvement (OERI) and required the Assistant Secretary to establish standards for evaluating the performance of recipients of OERI grants, cooperative agreements, and contracts (20 U.S.D. 6011 (I)(2)(B)(ii)).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–1245 Filed 1–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 15, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 10, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the State Grants Program and Teacher Recruitment Grants Program of Title II of the Higher Education Act.

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,200
Burden Hours: 1,000

Abstract: In 1999, the federal government funded a major effort toward increasing teacher quality through the State Grants Program and Teacher Recruitment Grants Program. Together, the programs allow states, institutions of higher education, and/or local education agencies to increase the quality of the teacher workforce through certification reform, recruitment efforts, alternative certification routes, and accountability measures. This evaluation looks at both programs to determine how federal funds were spent, what issues arose in implementing the programs, and the impact of the programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–1244 Filed 1–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.339A; 84.339B]

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001.

Purpose of Program: To provide grants or enter into cooperative agreements to enhance the delivery, quality, and accountability of postsecondary education and career-oriented lifelong learning through asynchronous distance education.

For fiscal year (FY) 2001, the Secretary encourages applicants to design projects that focus on the invitational priorities set forth in the invitational priorities section of this application notice.

Eligible Applicants: Partnerships consisting of two or more independent agencies, organizations, or institutions, including institutions of higher education, associations, corporations, community organizations, and other public and private institutions, agencies, and organizations.

Note: A nonprofit organization must serve as the fiscal agent for a funded partnership.

Applications Available: January 16, 2001.

Deadline for Transmittal of Preapplications: March 15, 2001.

Deadline for Transmittal of Applications: June 15, 2001.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: August 8, 2001.

Available Funds: $15,500,000.

Note: Federal funds available under this competition may not pay for more than 50 percent of the cost of a project. Grantees are required to share project costs by matching the requested Federal funds dollar for dollar. The non-Federal share of project costs may be in cash or in kind, fairly evaluated, including services, supplies, or equipment.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Size of Awards: $333,333 per year.

Estimated Number of Awards: 30–40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Authorized Activities

Funds awarded to an eligible partnership must be used to conduct one or more of the following activities:

(a) Develop and assess model distance learning programs or innovative educational software.

(b) Develop methodologies for the identification and measurement of skill competencies.

(c) Develop and assess innovative student support services.

(d) Support other activities consistent with the statutory purpose of this program.

Invitational Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects that achieve economies of scale by delivering programs over large geographic regions covering more students, faculty and institutions; and by promoting cost-sharing, resource sharing, and faculty collaboration across institutions.

Invitational Priority 2—Projects that develop high quality, interactive software that is both modular or sufficiently flexible for faculty modification of academic content, as well as portable for wide-scale implementation across institutions.

Invitational Priority 3—Projects that package courses and programs to assist students in accessing the offerings of multiple providers and to assist institutions in cooperating and sharing resources.

Invitational Priority 4—Projects that use skill competencies and learning outcomes to measure student progress and achievement in asynchronous distance learning programs.

Invitational Priority 5—Projects that improve quality and accountability of asynchronous distance education, thereby ensuring that credentials are meaningful, providers are accountable, and courses meet high standards.

Invitational Priority 6—Projects that create new asynchronous distance education opportunities for underserved learners, especially those who have not always been well served by traditional campus-based education or common forms of distance education, including: individuals with disabilities; individuals who have lost their jobs; individuals making the transition from welfare to the workforce; and individuals seeking basic or technical skills or their first postsecondary education experience.

Invitational Priority 7—Projects that improve support services for students seeking asynchronous distance education to ensure that they have complete and convenient access to needed services such as registration, financial aid, advising, assessment, counseling, libraries, and many others.

Invitational Priority 8—Projects that remove or revise institutional, system, State, or other policies, which are barriers to the implementation of new types of asynchronous distance education.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.210 to evaluate preapplications and applications for this competition. Under 34 CFR 75.201, the

Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site http://www.ed.gov/pubs/edpubs.html or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.339A.

FOR FURTHER INFORMATION CONTACT: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, N.W., Washington, DC 20006–8544. Telephone: (202) 502–7500. Individuals may also request applications or request information by submitting the name of the competition, their name, and postal mailing address to the e-mail address: LAAP@ed.gov.

The application text may be obtained from the Internet address http://www.ed.gov/FIPSE/LAAP

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact office listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting the email address: LAAP@ed.gov

However, the Department is not able to reproduce in alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1070f *et seq.*

Dated: January 9, 2001.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 01–1243 Filed 1–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year 2000 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 2000. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2002 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2001. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 4, 2001.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

Alternatively, SEAs may hand deliver submissions by 4 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD 20772.

If an SEA's submission is received by the Bureau of the Census after September 4, 2001 in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.

2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average state per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8801(12)).

In addition to using the SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965 as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as the

Technology Literacy Challenge Fund, the Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 2001, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2001, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 4, 2001.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 4, 2001 as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 4, 2001 the data may also be too late to be included in the final NCES published dataset.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html.

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, 1–888–293–6498; or in the Washington DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

Authority: 20 U.S.C. 9003(a).

Dated: January 10, 2001.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 01–1242 Filed 1–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science and Office of Environmental Management; Office of Science Financial Assistance Program Notice 01–19; Environmental Management Science Program: Research Related to Deactivation and Decommissioning Issues

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support specifically innovative, fundamental research to investigate DOE deactivation and decommissioning issues.

DATES: The deadline for receipt of formal applications is 4:30 P.M., E.S.T, March 20, 2001, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: Formal applications referencing Program Notice 01–19 should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–16. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, fax: (301) 903–0567, E-mail: roland.hirsch@science.doe.gov, or Mr. Mark Gilbertson, EM–52, Office of Basic and Applied Research, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, DC 20585, telephone: (202) 586–7150, E-mail: mark.gilbertson@em.doe.gov. The full text of Program Notice 01–19 is available via the Internet using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the clean-up of DOE's environmental legacy.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development Program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this Notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire breakthroughs in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's well-established procedures, as set forth in the Office of Science Merit Review System, available on the World Wide Web at: *http://www.science.doe.gov/production/grants/merit.html* will be used for merit review of applications submitted in response to this Notice. Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained at: http://www.emsp.em.doe.gov/main.htm. Additional Notices for the Environmental Management Science Program may be issued during Fiscal

Year 2001, covering other areas within the scope of the EM program.

Purpose

The purpose of the EMSP is to foster basic research that will contribute to successful completion of DOE's mission to clean-up the environmental contamination across the DOE complex.

The objectives of the Environmental Management Science Program are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly, reduce future costs, schedules, and risks;
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Science and needs-driven applied technology development that is—conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

The focus of the EMSP is on basic research and the objective of this research Program is to develop a long-range science plan for deactivation and decommissioning (D&D). The National Research Council, Committee on Long-Term Research Needs for Deactivation and Decommissioning at Department of Energy Sites, December 5, 2000 report provided technical advice on the ''recommended areas of research where the EM Science Program can make significant contributions to solving (D&D) problems and adding to scientific knowledge generally.''

Representative Research Areas

Basic research is solicited in all areas of science with the potential for addressing problems in deactivation and decommissioning. Relevant scientific disciplines include, but are not limited to: chemical sciences (including fundamental interfacial chemistry, computational chemistry, actinide chemistry, and analytical chemistry and instrumentation), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics and bioengineering), materials science (including other novel materials-related strategies), and bioremediation (including microbial science related to ex situ treatment of organics, metals and radionuclides and in situ treatment of organics).

Project Renewals

Lead Principal Investigators of record for Projects funded under Office of Science Notice 98–04, Environmental Management Science Program: Research Related to Decontamination and Decommissioning of Facilities, are eligible to submit renewal applications under this solicitation.

It is recognized that many of the projects funded in FY1998 of the program have already been very successful. At the same time, we believe that many of these research groups have the potential to make significant additional contributions toward addressing the science needs of the Office of Environmental Management (EM).

Program Funding

It is anticipated that up to a total of $4,000,000 of Fiscal Year 2001 Federal funds will be available for new Environmental Management Science Program awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs) and may be accessed on the World Wide Web at: *http://www.science.doe.gov/production/grants/LAB01_19.html.* All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Refer to: *http://www.sc.doe.gov/production/grants/Colab.html* for details.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Science Financial Assistance Program Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- SC Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation. Applicants are requested to include in the travel budget for each year funds to attend the annual National Environmental Management Science Program Workshop, and also for one or more extended (one week or more) visits to a clean-up site by either the Principal Investigator or a senior staff member or collaborator.
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages)
- Goals
- Significance of Project to the EM Mission
- Background
- Research Plan
- Preliminary Studies (if applicable)
- Research Design and Methodologies
- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories

In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research

1. Actinide Chemistry
2. Analytical Chemistry and Instrumentation
3. Bioremediation
4. Engineering Sciences

5. Interfacial Chemistry
6. Materials Science
7. Other

Application Evaluation and Selection

Scientific Merit

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Relevance to Mission

Researchers are encouraged to demonstrate a linkage between their research projects and significant contamination problems at DOE sites. Researchers could establish this linkage in a variety of ways—for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve D&D capabilities. Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program.

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Years 1996 through 2000, can be viewed at: *http://emsp.em.doe.gov/portfolio/multisearch.asp.*

Application Guide and Forms

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Major Environmental Management Challenges

The safety for workers conducting D&D operations is an issue that will grow as DOE takes on the more challenging D&D tasks. Workers deal with special hazards that are different from those in other parts of DOEs Accelerating Clean-up Paths to Closure (DOE, 1998a), including the following:

- Working in confined spaces in areas of high radioactivity,
- Disassembling and removing massive steel and concrete structures,
- Direct, hands-on manual labor with powerful saws, torches, and lifting devices, and
- Incomplete knowledge of the highly complex systems they are dismantling.

Scientific Issues

The recognized issues pose challenges in characterization, decontamination, and remote systems where current technology is inadequate and where EMSP funded, research could make significant contributions include:

Characterization

Characterization of contaminated materials is critical at several stages of D&D. Initially, the nature and extent of contamination with both radionuclides and toxic materials must be accurately assessed to ensure adequate protection of workers and the environment, as well as to allow the selection of appropriate methods of decontamination. During decontamination and/or demolition of contaminated equipment and structures, there must be some means of monitoring progress and potential contaminant releases. Finally, after decontamination, the nature and extent of residual contamination must be assessed to determine the final classification and disposal of the item in question.

(1) The identification and development of means, preferably real-time, minimally invasive, and field usable, to locate and quantify difficult to measure contaminants significant to D&D. These means should be applicable to the major materials and configurations of interest, such as concrete, stainless steel, and packaged wastes. The contaminants of interest, includes tritium, technetium-99, plutonium-239 and other actinides, beryllium, mercury, asbestos, and polychlorinated biphenyls (PCBs).

Rationale: The varied nature of D&D facilities has led to a wide range of contaminant types and site-specific characterization challenges, each generally requiring a detector tailored specifically to the contaminant being measured and its matrix. Some 2,700 buildings, constructed mostly of concrete and containing 180,000 metric tons of metals, are currently within EM's D&D task. Four areas where research can advance the state of art: (1) Methods to assess the distribution of contaminants within concrete; (2) sensors to measure contaminants on the surface and within micro-cracks of metals; (3) remote sensing of contaminants; and (4) biosensors.

The development of minimally and non-invasive real-time in situ sensing technologies to characterize the concentration of contaminants, as a function of depth within concrete, would eliminate difficulties associated with core sample collection and subsequent analysis. Minimally invasive schemes like laser ablation mass spectroscopy or non-intrusive techniques like neutron activation and x-ray analysis appear to be attractive candidates for further research.

More sensitive detectors, for example for alpha particles (USDOE, 1999), as well as simple-to-use techniques, such as chemical indicators are needed to quickly certify levels of nuclides, hazardous metals, and other toxic substances on structural surfaces and equipment. This will help ensure safety in the workplace and reduce costs—for example by allowing non-hazardous waste to be disposed in landfills. Analysis of residual low-energy beta emitters like tritium and Tc-99 is particularly challenging when these isotopes are inside equipment or mixed in heterogeneous waste matrices, because the beta articles cannot penetrate through most materials.

Remote sensing systems can provide both economic and safety benefits by distancing the worker from hazardous work areas. Remote mapping of activity

levels using gamma cameras (USDOE, 1998b) is now being used to great advantage in D&D operations. Smaller, higher sensitivity and resolution versions of these instruments would be desirable and may be achievable through further research on detector materials and geometries. Fiber-optic sensing for remote detection of some chemical species is feasible. Further research could lead to its use in sensing chemical contaminants relevant to D&D. Fiber-optic radiation sensors are a more recent development and opportunities exist for both improved performance and novel features such as optical interrogation.

(2) The basic research that could lead to development of biotechnological sensors to detect contaminants of interest may provide a completely new way to meet the needs for characterization of contaminated materials. The field of biotechnology is rapidly expanding, and the contaminants of interest and the materials and configurations in which they must be detected, is noted in (1).

Rationale: There has been tremendous growth in development and commercialization of a broad range of biosensor devices and applications. Modern devices can range from fiber-optic and micro-cantilever-linked immuno assays to subcellular and cellular micro-electronic. Analytes measurable by biosensors include a vast array of organic chemicals, biochemicals, inorganics, and metals and more recently ionizing radiation. Research to integrate microelectronics and nanotechnology with elements of gene array technology and cellular engineering may lead to new sensor technology (see *http://www.nano.gov/press.htm* for details). This technology could create new capacity for continuous and remote monitoring in chemically and physically complex environmental and structural systems characteristic of DOE's site D&D needs.

Decontamination

The decontamination of equipment and facilities is necessary at several stages of the D&D process. Initially, radiation and contamination levels may have to be reduced to allow worker access or to limit their exposure to radiation and other hazards. Decontamination may be required before dismantling or demolition work to prevent the spread of radioactive or toxic materials. Unplanned releases can have off-site as well as on-site consequences. Decontamination procedures are intended to result in a small volume of the most hazardous waste, and much larger volumes of waste that has low or no hazard, thus reducing the cost and long-term risk of disposal. Some decontaminated equipment or facilities might be recycled or reused. The end state of any decontamination activity must be consistent with both site-specific and overall DOE clean-up objectives.

(3) The basic research toward fundamental understanding of the interactions of important contaminants with the primary materials of interest in D&D projects, including concrete, stainless steel, paints, and ''strippable'' coatings is needed.

Rationale: Scientific understanding of the interactions among contaminants and construction materials is fundamental to developing more effective D&D technologies. Both radioactive and toxic contaminants can exist in a variety of chemical forms (for example, in different valence states, complexes, or as colloids), which exhibit very different behaviors. While a good deal of chemical data on the contaminants themselves exist as well as data on their transport in the environment there is little information of direct relevance to D&D problems. Such information includes how contaminants bind to steel and concrete surfaces, how they penetrate into these materials, their migration into pores, fissures, and welds, and time-dependent ''aging'' effects. Once sufficient thermodynamic and kinetic data on these interactions are obtained to allow their modeling from first principles, the models would allow various decontamination approaches to be evaluated and provide a better way to interpret data from characterization.

(4) The basic research on biotechnological means to remove or remediate contaminants of interest from surfaces and within porous materials.

Rationale: The capacity of microbiological processes to destroy, transform, mobilize, and sequester toxins, pollutants, and contaminants is well-established. Through research to extend well-known technology in mineral ore leaching and metal recovery, these biochemical capacities may be exploitable for removal of metals and radionuclides from concrete and building debris. An excellent example of which was recently described in an American Society for Microbiology report (see ASM News. 66:133). In addition, microbial biocorrosion processes for structural metals and concrete are well established and the opportunity exists to investigate fundamental processes that could facilitate volumetric reduction of waste from D&D activities. Biotechnical advances in surface treatments of contaminated structures and materials are anticipated from continuing R&D activities, elucidation of biocatalytic properties of biological systems and engineering chemicals, and biosurfactants with unique physical chemical properties. A fundamental understanding of the biological processes would also help to ensure that waste by-products from the decontamination could be safely treated and stabilized.

Remote Systems

For D&D work, remote systems provide a unique means to separate workers from hazardous work areas, thus enhancing their safety and productivity. This technology crosscuts all of the other D&D areas—characterization, decontamination, and dismantlement—and has the potential for substantial performance enhancement and cost reduction. There are broad ranges for potential applicability of fundamental advances in this area.

(5) The basic research toward creating intelligent remote systems that can adapt to a variety of tasks and be readily assembled from standardized modules. Today's remote systems are one-of-a-kind devices of high cost and limited capability. Their inflexibility leads to rapid obsolescence and is a barrier to their deployment. The recommended initial research focus would be as follows:

a. Actuators

Rationale: The actuator is the power (muscle) of remote systems, and as such, it is the key to performance, reliability, and cost. Except for better construction materials and improved control electronics, most actuator technology has not changed for several decades. Today's actuators typically use only one sensor (for position) so that virtually no real time data (for example, force and velocity) are available to make them ''intelligent.'' More complete sensory input, coupled with decision-making software can produce intelligent actuators that are able to adapt to a variety of tasks. Achieving a relatively inexpensive modular design to allow ''plug and play'' deployment of these devices would be especially useful because equipment that fails or becomes contaminated is usually discarded. Research to answer the question of granularity (What is the minimum number of required standard modules?) to enable the assembly on demand of the maximum number of remote systems would make the overall system substantially more cost effective in deployment and maintenance.

b. Universal Operational Software To Provide Criteria-Based Decision Making

Rationale: Criteria-based decision making is the essence of intelligence in robotic systems. What is the best use of the system's resources to perform the task at hand? Today's control of robotic devices is derived from techniques developed during World War II in which control is linear (based only on the difference between two measured parameters). A robot capable of mimicking human adaptability, however, would require a non-linear control system coupled to many parameters corresponding to the physical features that accurately represent performance of the task. The criteria-based software could be universal in the same sense that operating systems on personal computers are universal—one system supports many different applications.

c. Virtual Presence of the Worker in Hazardous Environments

Rationale: In the initial planning and characterization phases of D&D work, workers often must enter an area of high radiation and contamination that is also congested with left-in-place equipment and materials for which removal inevitably involves physical stress (fatigue) and the potential for personal injury. Virtual reality systems could allow workers to perform essential survey and decision making functions from a remote location thus enhancing their safety and productivity. Advances in the state of the art as now used in deep sea exploration should be pursued to improve overall system performance by providing force feedback, remote vision, collision avoidance, and radiation resistant sensor technology.

The nature and extent of contamination with both radionuclides and toxic materials must be accurately assessed to ensure adequate protection of workers and the environment, as well as to allow the selection of appropriate methods of decontamination.

Background

DOE expects to spend some $30 billion for D&D of weapons complex facilities after 2006. For example the Savannah River and Hanford sites present the biggest D&D challenges and will be undertaken after 2006 with about half of the $30 billion being saved through use of innovative technologies that it expects could be developed by that time.

The United States involvement in nuclear weapons development for the last 50 years has resulted in the development of a vast research, production, and testing network known as the nuclear weapons complex. The Department has the challenge of deactivating 7,000 contaminated buildings and decommissioning 900 contaminated buildings that are currently on DOE's list of surplus facilities. It is also responsible for decontaminating the metal and concrete within those buildings and disposing of 180,000 metric tons of scrap metal. Deactivation refers to ceasing facility operations and placing the facility in a safe and stable condition to prevent unacceptable exposure of people or the environment to radioactive or other hazardous materials until the facility can be decommissioned. Typically, deactivation involves removal of fuel and stored radioactive and other hazardous materials and draining of systems. Decommissioning is the process of decontaminating or removing contaminated equipment and structures to achieve the desired end state for the facility. Desired end states include complete removal and remediation of the facility, release of facility for unrestricted use, or release of facility for restricted use. Decontamination is the removal of unwanted radioactive or hazardous contamination by a chemical or mechanical process.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by Environmental Management Program can be found on the World Wide Web at: *http://www.em.doe.gov/index4.html* and at the extensive links contained therein. The programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

References

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 1995. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, DC, *http://www.em.doe.gov/circle/index.html*

DOE. 1998a. Accelerating Clean-up: Paths to Closure—June 1998. *http://www.em.doe.gov/closure*

DOE. 1998. Report to Congress on the U.S. Department of Energy's Environmental Management Science Program—April 1998. *http://emsp.em.doe.gov/*

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Environmental Management Advisory Board Science Committee. 1997. Resolution on the Environmental Management Science Program dated May 2, 1997.

National Research Council. 1996. Affordable Clean-up? Opportunities for Cost Reduction in the Decontamination and Decommissioning of the Nation's Uranium Enrichment Facilities. Washington, DC: National Academy Press.

National Research Council. 1998. A Review of Decontamination and Decommissioning Technology Development Programs at the DOE. Washington, DC: National Academy Press.

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC, *http://www.nap.edu/readingroom/books/envmanage/*

National Research Council. 2000. Letter Report, Committee on Long-Term Research Needs for Deactivation and Decommissioning at Department of Energy Sites December 5, 2000. *http://books.nap.edu/books/NI000321/html/1.html#pagetop*

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on alternative Futures for the Department of Energy National Laboratories. Washington, DC, *http://www.hr.doe.gov/seab/galvin/tf-rpt.html*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington DC on January 9, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–1182 Filed 1–12–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science and Office of Environmental Management; Office of Science Financial Assistance Program Notice 01–16: Environmental Management Science Program: Basic Science Research Related to High Level Radioactive Waste

AGENCY: Office of Science and Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support specific activities for high level radioactive waste; which include, but are not limited to, characterization and safety, retrieval of tank waste and tank closure, pretreatment, and waste immobilization and disposal.

DATES: The deadline for receipt of formal applications is 4:30 p.m. E.S.T., March 8, 2001, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: Formal applications referencing Program Notice 01–16 should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–16. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, fax: (301) 903–0567, E-mail: roland.hirsch@science.doe.gov, or Mr. Mark Gilbertson, Office of Basic and Applied Research, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (202) 586–7150, E-mail: Mark.Gilbertson@em.doe.gov. The full text of Program Notice 01–16 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the clean-up of DOE's environmental legacy. The program was initiated in Fiscal Year 1996. Ideas for basic scientific research are solicited which promote the broad national interest of a better understanding of the fundamental characteristics of highly radioactive chemical wastes and their effects on the environment.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development Program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this Notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire ''breakthroughs'' in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's well-established procedures, as set forth in the Office of Science Merit Review System, available on the World Wide Web at: *http://www.science.doe.gov/production/grants/merit.html* will be used for merit review of applications submitted in response to this Notice. Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious, will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program and for relevance to the technical focus of this solicitation (see ''Relevance to Mission'' section below). Additional information can be obtained at *http://emsp.em.doe.gov*. Additional Notices for the Environmental Management Science Program may be issued during Fiscal Year 2001 covering other areas within the scope of the EM program.

Purpose

The purpose of the EMSP is to foster basic research that will contribute to successful completion of DOE's mission to clean-up the environmental contamination across the DOE complex.

The objectives of the Environmental Management Science Program are to:

1. Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks;

2. ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and

3. Focus the Nation's science infrastructure on critical DOE environmental management problems.

Representative Research Areas

Basic research is solicited in areas of science with the potential for addressing problems in the clean-up of high level radioactive waste. Relevant scientific disciplines include, but are not limited to, chemistry (including actinide chemistry, analytical chemistry and instrumentation, interfacial chemistry, and separation science), computer and mathematical sciences, engineering science (chemical and process engineering), materials science (degradation mechanisms, modeling, corrosion, non-destructive evaluation, sensing of waste hosts, canisters), and physics (fluid flow, aqueous-ionic solid interfacial properties underlying rheological processes).

Project Renewals

Lead Principal Investigators of record for Projects funded under Office of Science Notice 98–08, Environmental Management Science Program: Research Related to High Level Radioactive Waste, are eligible to submit renewal applications under this solicitation.

Program Funding

It is anticipated that up to a total of $4,000,000 of Fiscal Year 2001, Federal funds will be available for new Environmental Management Science Program awards resulting from this Announcement. Multiple-year funding of awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be

on the order of $100,000–$300,000 per year for total project costs for a typical three-year award. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs) and may be accessed on the World Wide Web at *http://www.science.doe.gov/production/grants/LAB01_16.html*. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Refer to *http://www.sc.doe.gov/production/grants/Colab.html* for details.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Applications

Applicants are expected to use the following format in addition to following instructions in the Office of Science Financial Assistance Program Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- SC Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation. Applicants are requested to include in the travel budget for each year funds to attend the annual National Environmental Management Science Program Workshop, and also for one or more extended (one week or more) visits to a clean-up site by either the Principal Investigator or a senior staff member or collaborator
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages)
- Goals
- Significance of Project to the EM Mission
- Background
- Research Plan
- Preliminary Studies (if applicable)
- Research Design and Methodologies
- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories

In order to properly classify each application for evaluation and review, the application must indicate the proposer's preferred scientific research field, selected from the following list.

Field of Scientific Research

1. Actinide Chemistry
2. Analytical Chemistry and Instrumentation
3. Separations Chemistry
4. Engineering Sciences
5. Geochemistry
6. Geophysics
7. Hydrogeology
8. Interfacial Chemistry
9. Materials Science
10. Other

Application Evaluation and Selection

Scientific Merit

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Relevance to Mission

Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program and for relevance to the technical focus of the solicitation (see section below).

''Researchers are encouraged to demonstrate a linkage between their research projects and significant clean up related problems at DOE sites. Researchers could establish this linkage in a variety of ways—for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve remediation capabilities.'' (National Research Council, Board on Radioactive Waste Management, December 1998)

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Year 1996 through Fiscal Year 2001, can be viewed at *http://www.doe.gov/em52/science-grants.html*.

Application Guide and Forms

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Technical Focus of the Solicitation

This research announcement has been developed for Fiscal Year 2001, along with a development process for a long-term program within Environmental Management, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. A general description of the high level waste problem can be found in the Background section of this Notice. Detailed descriptions of the specific technical (science) needs and areas of emphasis associated with this problem area are available on the Tanks Focus Area web site at *http://www.pnl.gov/tfa*.

Long Term Research Agenda for High Level Radioactive Waste

The National Academy of Science's National Research Council was requested to assist the DOE in developing a long-range science plan for the management of radioactive high-level waste at DOE sites. The Committee empanelled to study that issue determined that some High Level Waste related problems will require further research and development to minimize risk and program cost and to improve the effectiveness of clean-up. Their recommendations in four topic areas are the focus of this solicitation and are described below. More detailed descriptions of the specific technical (science) needs in these four topic areas are available on the Tanks Focus Area web site at: *http://www.pnl.gov/tfa*.

1. Long-Term Issues Related to Tank Closure

An example of research activities to address this issue is innovative methods for in situ characterization of the High Level Waste remaining in the tanks after retrieval to facilitate tank closure.

2. High-Efficiency, High-Throughput Separation Methods That Would Reduce High-Level Waste Program Costs Over the Next Few Decades Including

a. High-efficiency separation, and

b. Minimization of the volume of secondary waste.

Applications on separation sciences addressing these two areas are encouraged. The projects should address all types of separations: solids from liquids from gases, High Level Waste from low level waste, and radionuclides from organic compounds.

An example of a project addressing separation issues could be research on processes that remove multiple radionuclides in a single step.

1. Robust, High Loading, Immobilization Methods and Materials That Could Provide Enhancements or Alternatives to Current Immobilization Strategies including

a. Alternatives to borosilicate glasses using slurry-fed electric (Joule) melter as an immobilization matrix, and

b. Alternatives melter techniques.

As an example, a research project might study alternative immobilization matrixes, tailored to either High Level Waste or low level waste, such as cement or crystalline ceramics. Applications to conduct research on alternative melter techniques that would increase the processes available to address different waste streams leading to more efficient immobilization results are encouraged.

4. Innovative Methods To Achieve Real-Time, and, When Practical, in situ Characterization Data for High Level Waste and Process Streams That Would Be Useful for all Phases of the Waste Management Program With Emphasis on

a. Characterization of the waste after retrieval, for instance in process streams and melter feeds.

Applications aimed at developing techniques to achieve shorter turn-around times for the analytical results, which in turn would allow better control of High Level Waste processing are encouraged. An example of such a project is research on fiber-optical interrogation to characterize process streams.

Attendant to paragraph 1. above, there was another area highlighted by the National Research Council regarding long-term issues related to characterization of surrounding areas including radionuclide and metal contamination problems in the near-field around the tanks, and engineered surface or subsurface barriers. These topics will be a matter of a future solicitation for research regarding subsurface contamination.

Specific High Level Waste Science Needs

Detailed information on the specific high level waste technical (science) needs within the general topic areas of this solicitation are available from the Tanks Focus Area Home Page at: *http://www.pnl.gov/tfa*. Relevance to mission reviews will consider responsiveness to the four topic areas of this solicitation and these corresponding specific technical needs. Additional general science research needs and information is also available at: *http://emsp.em.doe.gov/focus_area.htm*.

The aforementioned areas of emphasis do not preclude, and DOE strongly encourages, any innovative or creative ideas contributing to solving EM High Level Waste challenges mentioned throughout this Notice.

For further information regarding the Tanks Focus Area please contact: Mr. Theodore P. Pietrok, Tanks Focus Area, U.S. Department of Energy, P.O. Box 550, Mail Stop K8–50, Richland, WA 99352, telephone: (509) 372–4546, Fax: (509) 372–4037, E-mail: *Theodore_P_Pietrok@rl.gov*.

Background

Environmental Management (EM) is responsible for the development, testing, evaluation, and deployment of remediation technologies to characterize, retrieve, treat, concentrate, and dispose of radioactive waste stored in the underground storage tanks at DOE facilities and ultimately stabilize and close the tanks. The goal is to provide safe and cost-effective solutions that are acceptable to both the public and regulators.

Radioactive high level waste is stored at four sites across the DOE complex:

1. Hanford Site near Richland, Washington
2. Savannah River Site (SRS) near Aiken, South Carolina
3. Idaho National Engineering and Environmental Laboratory (INEEL) near Idaho Falls, Idaho
4. West Valley Demonstration Project (WVDP) in West Valley, New York

At these sites, 282 underground storage tanks have been used to process and store radioactive and chemical mixed waste generated from weapon materials production and manufacturing. Collectively, these tanks hold approximately 90 million gallons of high-level and low-level radioactive liquid waste in sludge, saltcake, and as supernate and vapor.

Tanks vary in design from carbon or stainless steel to concrete, and concrete with carbon steel liners. Two types of storage tanks are most prevalent: the single-shell and double-shell concrete tanks with carbon steel liners. Capacities vary from 5,000 gallons (19m3) to 1,300,000 gallons (4920m3). Most tanks are covered with a layer of soil ranging from approximately 3 to 10 feet thick.

Most of the waste is alkaline and contains a diverse mixture of chemical constituents including nitrate and nitrite salts (approximately half of the total waste), hydrated metal oxides, phosphate precipitates, and ferrocyanides. The 784 MCi of radionuclides are distributed primarily

among the transuranic (TRU) elements and fission products, specifically strontium-90, cesium-137, and their decay products yttrium-90 and barium-137. In-tank atmospheric conditions vary in severity from near ambient to temperatures over 93° C. Radiation fields in the tank void space can be as high as 10,000 rad/h.

Hanford has 177 tanks that contain approximately 53 million gallons of hazardous and radioactive waste. There are 149 single-shell tanks that have exceeded their original design life. Sixty-seven of these tanks have known or suspected leaks. Due to several changes in the production processes since the early 1940s, some of the tanks contain incompatible waste components, generating hydrogen gas and excess heat that further compromise tank integrity.

Radioactive waste at SRS consists of 33 million gallons of salt, salt solution, and sludge stored in 51 double-shell underground storage tanks, two of which have been closed (emptied of all waste and filled with grout). Twenty-three tanks are being retired, because they do not have full secondary containment. Nine tanks have leaked detectable quantities of waste from the primary tank to secondary containment.

Unlike the other DOE sites, radioactive waste at INEEL was stored in acidic conditions in stainless steel tanks rather than alkaline conditions. The 11 stainless steel tanks at INEEL store approximately 1.2 million gallons of acidic radioactive liquids. Additionally, approximately 4000 m3 of calcined waste solids are stored in seven stainless steel bin sets enclosed in massive underground concrete vaults.

At the West Valley Demonstration Project nearly all of the original 600,000 gallon of HLW has been retrieved and vitrified. This site is now in the process of cleaning the storage tanks and preparing for closure.

The general process for waste tank remediation involves a number of critical steps including:

- Safe waste storage.
- Waste characterization.
- Retrieval of tank waste.
- Pretreatment and separation of tank waste.
- Waste immobilization.
- Tank closure, and
- Immobilized waste disposal.

Tank remediation problems within these critical process steps are described below. Several process steps are combined for the purpose of describing related technical issues

Characterization and Safety

DOE, contractors, and stakeholders have committed to a safe and efficient remediation of HLW, mixed waste, and hazardous waste stored in underground tanks across the DOE complex.

Currently, there are only limited fully developed or deployed in situ techniques to characterize tank waste. In situ characterization can eliminate the time delay between sample removal and sample analysis and aid in guiding the sampling process while decreasing the cost (approximately $1 million is spent for one tank core extrusion) of waste analysis. Most importantly, remote analysis eliminates sample handling and safety concerns due to worker exposure. However, analysis of extruded tank samples allows a more complete chemical and physical characterization of the waste when needed. Knowledge of the chemical and radioactive composition and physical parameters of the waste is essential to safe and effective tank remediation.

There are three primary drivers for the development of new chemical analysis methods to support tank waste remediation: (1) Provide analyses for which there are currently no reliable existing methods, (2) replace current methods that require too much time and/or are too costly, and (3) provide methods that evolve into on-line process analysis tools for use in waste processing facilities.

Characterization of the elemental and isotopic chemical constituents in DOE tank waste is an important function in support of DOE tank waste operation and remediation functions. Proper waste characterization enables: safe operation of the tank farms; resolution of tank safety questions; and development of processes and equipment for retrieval, pretreatment, and immobilization of tank waste. All of these operations are dependent on the chemical analysis of tank waste.

Current techniques of tank waste analysis involve the removal of core samples from tanks, followed by costly and time consuming wet analytical laboratory testing. Savings in both cost and time could be realized in techniques that involve in situ probes for direct analysis of tank materials.

Leakage from the single shell tanks at Hanford is among the safety concerns. As indicated earlier many of the 149 single shell tanks are known or suspected to leak. This presents a grave problem for retrieval of waste from these tanks since the baseline method for retrieval is to sluice thousands of gallons of water into the tank to dissolve and suspend the waste. HLW waste leakage into the environment can threaten the ground water. There is a need to develop instrumentation to determine the location of a leak, measure the amounts of contamination that may have leaked, and assess the environmental impact.

Another safety concern is the long-term performance of waste forms. Performance assessments of radionuclide containment rely primarily on the geologic barriers (e.g., long travel times in hydrologic systems or sorption on mineral surfaces). The physical and chemical durability of the waste form, however, can contribute greatly to the successful isolation of radionuclides; thus the effects of radiation on physical properties and chemical durability of waste forms are of great importance. The changes in chemical and physical properties occur over relatively long periods of storage, up to a million years, and at temperatures that range from 100 to 300 degrees Celsius, depending on waste loading, age of the waste, depth of burial, and the repository-specific geothermal agent. Thus, a major challenge is to effectively simulate high-dose radiation effects that will occur over relatively low-dose rates over long periods of time at elevated temperatures. Similarly, there is a paramount need for improved understanding and modeling of the degradation mechanisms and behavior of primary radioactive waste hosts and/or their containment canisters, corrosion mechanisms and prevention in aqueous and/or alkali halide containing environments, and remote sensing and non-destructive evaluation.

Examples of specific science research challenges include but are not limited to: basic measurement science and sensor development required for remote detection of low concentrations of hydrogen inside tanks and in containers; basic analytical studies needed to develop new methods for chemical and physical characterization of solid and liquids in slurries and for development of advanced processing methodologies; basic instrument development needed to perform in situ radiological measurements and collect spatially resolved species and concentration data; basic materials and engineering science needed to develop radiation hardened instrumentation.

Retrieval of Tank Waste and Tank Closure

Underground tanks throughout the DOE complex have stored a diverse accumulation of wastes during the past fifty years of weapons and fuel production. If these tanks were isolated in a manner that would preclude the

escape of radiation into the environment for thousands of years, there would be no reason to disturb them. However, a number of the storage tanks are approaching the end of their design life, and 90 tanks have either leaked or are suspecting of having leaked waste into the soil and sediments near the tanks.

Recently, dewatering processes have removed much of the free liquid from the alkaline waste tanks. The tanks now contain wastes ranging in consistency from remaining supernate and soft sludge to concrete-like saltcake. Tanks also contain miscellaneous foreign objects such as Portland cement, measuring tapes, samarium balls, and in-tank hardware such as cooling coils and piping. Unlimited sluicing, adding large quantities of water to suspend solids, is the baseline method for sludge removal from tanks. This process is not capable of retrieving all of the material from tanks. Besides dealing with aging tanks and difficult wastes, retrieval also faces the problem of the tank design itself. Retrieval tools must be able to enter the tanks, which are under an average of 10 feet of soil, through small openings called risers in the tops of the tanks.

Retrieval of tank waste and tank closure requires tooling and process alternative enhancements to mixing and mobilizing bulk waste as well as dislodging and conveying heels. Heel removal is linked to tank closure. The working tools and removal devices being developed include suction devices, rubblizing devices, water and air jets, waste conditioning devices, grit blasting devices, transport and conveyance devices, cutting and extraction tools, monitoring devices, and various mechanical devices for recovery or repair of waste dislodging and conveyance tools.

The areas directly below the access risers are often disturbed or contain a significant amount of discarded debris. Therefore, evaluation of tank waste characteristics by measurements taken at these locations may not be representative of the properties of the waste in other areas of the tanks.

To monitor current conditions and plan for tank remediation, more information on the tank conditions and their contents is required. Current methods used at DOE tank sites are limited to positioning sensors, instruments, and devices to locations directly below access penetrations or attached to a robotic arm for off-riser positioning. These systems can only deploy one type of sensor, requiring multiple systems to perform more than one function in the tank.

Currently, decisions regarding necessary retrieval technologies, retrieval efficiencies, retrieval durations, and costs are highly uncertain. Although tank closure has been completed on only two HLW tanks (at Savannah River), the tank contents proved amenable to waste retrieval using current technology. DOE has just begun to address the issue of how clean a tank must become before it is closed. Continued demonstration that tank closure criteria can be developed and implemented will provide substantial benefit to DOE.

A related problem that retrieval process development is examining the current lack of a retrieval decision support tool for the end users. As development activities move forward toward collection of retrieval performance and cost data, it has become very evident that the various sites across the complex need to have a decision tool to assist end users with respect to waste retrieval and tank closure. Tank closure is intimately tied to retrieval, and the sensitivity of closure criteria to waste retrieval is expected to be very large.

All the existing processes and technologies that could be used as a baseline for tank remediation have not yet been identified. Identifying these processes is one of EM's major issues in addressing the tank problems. The overall purpose of retrieval enhancements is to continue to lead the efforts in the basic understanding and development of retrieval processes in which waste is mobilized sufficiently to be transferred out of tanks in a cost-effective and safe manner. From that basic understanding, data are provided to end users to assist them in the retrieval decision-making process. The overall purpose of retrieval enhancements is to identify processes that can be used to reduce cost, improve efficiency, and reduce programmatic risk.

Basic engineering and separation science studies are needed to support tank remediation of liquids, which contain high concentrations of solids.

Pretreatment and Separation Processes for Tank Waste

About 90 million gallons of HLW are stored in tanks at four primary sites within the DOE complex. It is neither cost-effective nor practical to treat and dispose of all of the tank waste to meet the requirements of the HLW repository program and the Nuclear Waste Policy Act. The pretreatment area seeks to address multiple needs across the DOE complex. The primary objectives are to reduce the volume of HLW, reduce hazards associated with treating LLW, and minimize the generation of secondary waste.

The current baseline technology systems for waste pretreatment at DOE's tank waste sites are expensive, and technology gaps exist. Large volumes of HLW will be generated, while there is limited space in the planned Nuclear Waste Repository for HLW from DOE. Even if adequate space were made available, treatment and disposal of HLW is still very expensive, estimated to be about $1 million for each canister of vitrified HLW. Only a small fraction of the tank waste, by weight, is made up of HLW radionuclides. The bulk of the waste is chemical constituents intermingled with, and sometimes chemically bonded to, the radionuclides. The chemicals and radionuclides can be separated into HLW and LLW fractions for less costly treatment and disposal.

Most of the tank waste was generated as a result of nuclear fuel processing for weapons production. In that process, irradiated fuel and its cladding were first dissolved, uranium and plutonium were recovered as products, and the highly radioactive fission product wastes were concentrated and sent to the tanks for long-term storage.

Fuel processing at SRS did not change substantially from the beginning of operations in about 1955 to the present. While these wastes are fairly uniform, they still require pretreatment to separate the LLW from HLW prior to immobilization. Liquid waste at INEEL is stored under acidic pH conditions in stainless steel tanks. The original liquid high level waste has been calcined at high temperature to a dry powder. At Hanford, several processes were used over the years (beginning in 1944), each with a different chemical process. This resulted in different waste volumes and compositions. Wastes at Hanford and SRS are stored as highly alkaline material so as not to corrode the carbon steel tanks. The process of converting the waste from acid to alkaline resulted in the formation of different physical forms within the waste.

The primary forms of tank waste include sludge, saltcake, and liquid. The bulk of the radioactivity is known to be in the sludge which makes it the largest source of HLW. Saltcake is characteristic of the liquid waste with most of the water removed. Saltcake is found primarily in older single-shell tanks at Hanford.

Saltcake and liquid waste contain mostly sodium nitrate and sodium hydroxide salts. They also contain soluble radionuclides such as cesium. Strontium, technetium, and transuranics

are also present in varying concentrations. The radionuclides must be removed; leaving a large portion of waste to be treated and disposed of as LLW and a very small portion that is combined with HLW from sludge for subsequent treatment and disposition.

Over the years, tank waste has been blended and evaporated to conserve space. Although sludge contains most of the radionuclides, the amount of HLW glass produced (vitrification is the preferred treatment of HLW) could be very high without pretreatment of the sludge. Pretreatment of the sludge by washing with alkaline solution can remove certain nonradioactive constituents and reduce the volume of HLW. Pretreatment can also remove constituents that could degrade the stability of HLW glass. The pretreatment area seeks to address multiple needs across the DOE complex. The primary objectives are to reduce the volume of HLW, reduce hazards associated with treating LLW, and minimize the generation of secondary waste.

The concentration of certain chemical constituents such as phosphorus, sulfur, and chromium in sludge can greatly increase the volume of HLW glass produced upon vitrification of the sludge. These components have limited solubility in the molten glass at very low concentrations. Some sludge has high concentrations of aluminum compounds, which can also be a controlling factor in determining the volume of HLW glass produced. Aluminum above a threshold concentration in the glass must be balanced with proportional amounts of other glass-forming constituents such as silica. There are estimated to be 25 different types of sludge at Hanford distributed among more than 100 tanks. Samples from 49 tanks would represent approximately 93 percent of the sludge in Hanford tanks. Testing of enhanced sludge washing, the combination of caustic leaching and water washing of sludge, on all of these samples is needed to determine whether enhanced sludge washing will result in an acceptable volume of HLW glass destined for the repository and will allow processing in existing carbon steel tanks at Hanford and SRS.

The efficiency of enhanced sludge washing is not completely understood. Inadequate removal of key sludge components could result in production of an unacceptably large volume of HLW glass. Improvements are needed to increase the separation of key sludge constituents from the HLW.

Enhanced sludge washing is planned to be performed batch-wise in large double-shell tanks of nominal one million gallon capacity. This will generate substantial volumes of waste solutions that require treatment and disposal as LLW. Settling times for suspended solids may be excessive and the possibility of colloid or gel formation could prohibit large-scale processing. Alternatives are needed that will reduce the amount of chemical addition required and prevent the possibility of colloid formation. Sludge at SRS and Hanford will be washed to remove soluble components prior to vitrification. Removing suspended solids from the wash solutions is inherently inefficient due to long intervals required for the solids to settle out.

Approximately 1.2 million gallons of acidic liquid waste are stored in single-shell, stainless steel, underground storage tanks at INEEL. In 1992, a Notice of Noncompliance was filed by the State of Idaho stating that the tanks did not meet secondary containment requirements of the Resource Conservation and Recovery Act. Subsequently, an agreement was reached between DOE, the Environmental Protection Agency, and the Idaho Department of Health and Welfare that commits DOE to remove the liquid waste from all underground tanks by the year 2015. Recent discussions with the state of Idaho have accelerated this date to 2012.

The baseline treatment for INEEL liquid and calcine waste was recently reviewed as part of the site's Environmental Impact Statement process. The site is now developing a revised roadmap to pursue direct vitrification of the liquid waste and determine the best path to treat the calcine.

The transuranic extraction process for removal of actinides, or transuranics, from acidic wastes has been tested on actual Idaho waste in continuous countercurrent process equipment. The strontium extraction process shows promise for co-extraction of strontium and technetium and also has been demonstrated on Idaho waste in continuous countercurrent operation.

DOE's underground storage tanks at Hanford, SRS, and INEEL contain liquid wastes with high concentrations of radioactive cesium. Cesium is the primary radioactive constituent found in alkaline supernatant wastes. Since the primary chemical components of alkaline supernatants are sodium nitrate and sodium hydroxide, the majority of the waste could be disposed of as LLW if the radioactivity could be reduced below Nuclear Regulatory Commission limits. Processes have been demonstrated that removed cesium from alkaline supernatants and concentrate it for eventual treatment and disposal as HLW.

At Hanford, cesium must be removed to a very low level (3 Ci/m3) to allow supernatant waste to be treated as LLW and disposed of in a near-surface disposal facility. The revised Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement (between DOE, Environmental Protection Agency and the Washington State Department of Ecology) also recommends treatment of LLW in a contact-maintained or minimally shielded vitrification facility to speed remediation and reduce costs. Cesium removal performance data are needed to estimate dose rates for this process and provide input to the design of an LLW pretreatment facility for Hanford supernatants.

At SRS, cesium removal from saltcake waste was planned to be accomplished through use of an in-tank precipitation process. Due to safety and technical challenges, that process was abandoned. Three alternatives including alkaline solvent extraction, cesium ion exchange using crystalline silicotitanate and small tank tetraphenylborate precipitation are currently being evaluated for use in treating the SRS saltcake waste. Cesium removal may also be needed to separate cesium from Defense Waste Processing Facility recycle, or offgas condensate, to greatly reduce the amount of cesium that is routed back to the waste storage tanks.

Technetium (Tc)-99 has a long half-life (210,000 years) and is very mobile in the environment when in the form of the pertechnetate ion. Removal of Tc from alkaline supernatants and sludge washing liquids is expected to be required at Hanford to permit treatment and disposal of these wastes as LLW. The disposal requirements are being determined by the long-term performance assessment of the LLW waste form in the disposal site environment. It is also expected that Tc removal will be required for at least some wastes to meet Nuclear Regulatory Commission LLW criteria for radioactive content. To meet these expected requirements, there is a need to develop technology that will separate this extremely long-lived radionuclide from the LLW stream and concentrate it for feed to HLW vitrification.

A number of liquid streams encountered in tank waste pretreatment contain fine particulate suspended solids. These streams may include tank waste supernatant, waste retrieval sluicing water, and sludge wash solutions. Other process streams with potential for suspended solids include evaporator products and ion exchange

feed and product streams. Suspended solids will foul process equipment such as ion exchangers. Radioactive solids will carry over into liquid streams destined for LLW treatment, increasing waste volume for disposal and increasing the need for shielding of process equipment. Streams with solid/liquid separation needs exist at all of the DOE tank waste sites.

Some examples of specific science research challenges include but are not limited to: fundamental analytical chemical studies needed for improvement of separation processes; materials science of waste forms germane to their performance; elucidation of technetium chemistry; basic engineering and separation science studies required to support pretreatment activities and the development of solid/liquid separations; fundamental separations chemistry of precipitating agent and ion exchange media needed to support the development of improved methods for decontamination of HLW; fundamental physical chemistry studies of sodium nitrate/nitrite needed for HLW processing; basic materials science studies concerned with the dissolution of mixed oxide materials characteristic of calcine waste needed to design improved pretreatment processes; basic chemistry of sodium when mixed with rare earth oxides needed for the development of alternative HLW forms.

Waste Immobilization and Disposal

Waste immobilization processes convert radioactive waste into solid waste forms that will last in natural environments for thousands of years. DOE tank wastes requiring immobilization include LLW such as the pretreated liquid tank waste and HLW such as the tank sludge. There are also a number of secondary wastes requiring immobilization that result from tank waste remediation operations, such as resins from cesium and technetium removal operations.

The baseline technologies to immobilize radioactive wastes from underground storage tanks at DOE sites include converting LLW to either grout or glass and converting HLW to borosilicate glass. Grout is a cement-based waste form that is produced in a mixer tank and then poured into canisters or pumped into vaults. Glass waste forms are created in a ceramic-lined metal furnace called a melter. Tank waste and dry materials used to form glass are mixed and heated in the melter to temperatures ranging from 1,800 F to 2,200 F. The molten mixture is then poured into log-shaped canisters for storage and disposal. The working assumption is that the LLW will be disposed of on site, or at the Waste Isolation Pilot Plant if transuranic elements are present. The HLW will be shipped for off-site disposal in a licensed HLW repository, such as the one proposed at Yucca Mountain, Nevada.

Methods are needed to immobilize the LLW fraction resulting from the separation of radionuclides from the liquid and high-level calcine wastes at INEEL. LLW is to be mixed with grout, poured into steel drums, and transferred to an interim storage facility, but alternatives are being considered. Tests must be conducted with surrogate and actual wastes to support selection of a final waste form. SRS has selected saltstone grout (pumped to above ground concrete vaults and solidified) as the final waste form for LLW.

DOE sites at Hanford, SRS, and INEEL will remove cesium from the hazardous radioactive liquid waste in the underground storage tanks. If cesium is removed, it costs less to treat the rest of the waste. However, cesium removal from tank waste, while cost-effective, creates a significant volume of solid waste that must be turned into a final waste form for ultimate disposal. The plan is to separate cesium from the liquid waste using ion exchange or other separations media, treat the cesium-loaded separations media to prepare it for vitrification, and convert the cesium product into a glass waste form suitable for final disposal. Personnel exposures during processing and the amount of hazardous species in the offgases must be kept within safe limits at all times.

The effectiveness of advanced oxidation technology for treating organic cesium-loaded separations media prior to vitrification is not proven. After a suitable melter feed is obtained, vitrification of the cesium-loaded media must be demonstrated. Technology development is needed because: (1) Compounds are in the separation media that must be destroyed or they will cause flammability problems in the melter and decrease the durability and waste loading of the final waste form; (2) High beta/gamma dose rates are associated with handling cesium-containing waste; and (3) Cesium volatizes in the melter and becomes a highly radioactive offgas problem.

Confidence and assurance that long-term immobilization will be successful in borosilicate glass warrants research and improved understanding of the structural and thermodynamic properties of glass (including the structure and energetics of stable and metastable phases), systematic irradiation studies that will simulate long term self-irradiation doses and spectra, (including archived glasses containing Pu or Cm, and over the widest range of dose, dose rate and temperature) and predictive theory and modeling based on computer simulations (including ab initio, Monte Carlo, and other methods).

Some examples of specific science research challenges include but are not limited to: fundamental chemical studies needed to determine species concentrations above molten glass solutions containing heavy metals, cesium, strontium, lanthanides, actinides, with and without a cold cap composed of unmelted material; materials science studies of molten materials that simulate conditions anticipated during vitrification and storage in vitrified form of HLW needed to develop improved processes and formulations; fundamental physical chemistry studies of sodium nitrate/nitrite mixtures needed for HLW stabilization.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DOE. 2000. DOE's Research and Development Portfolio for FY 2001. *http://www.osti.gov/portfolio/.*

DOE. 2000. Paths to Closure—A collection of documents on accelerating clean-up. *http://www.em.doe.gov/closure/.*

DOE. 2000. Tanks Focus Area References and Bibliography *http://www.pnl.gov/tfa/back/reference.stm.*

DOE. 2000. Environmental Management Dynamic Organization Chart. *http://www.em.doe.gov/orgchart.html.*

DOE. 2000. Environmental Management Science Program. *http://www.em.doe.gov/.*

DOE. 2000. Office of Science and Technology (EM–50). *http://ost.em.doe.gov/.*

NRC. 2000. Long-Term Research Needs for High-Level Waste at Department of Energy Sites: Interim Report. *http://www.nap.edu/catalog/9992.html.*

NRC. 2000. Alternatives for High-Level Waste Salt Processing at the Savannah River Site. *http://www.nap.edu/books/0309071941/html/.*

NRC. 1999. Disposition of High-Level Radioactive Waste Through Geological Isolation: Development, Current Status, and Technical and Policy Challenges.

http://books.nap.edu/books/0309067782/html/1.html.

NRC. 1999. Interim Report—Committee on Cesium Processing Alternatives for High-Level Waste at the Savannah River Site. *http://books.nap.edu/books/NI000350/html/index.html.*

NRC. 1999. Alternative High-Level Waste Treatments at the Idaho National Engineering and Environmental Laboratory. *http://books.nap.edu/books/030906628X/html/129.html.*

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.)

Issued in Washington, DC, on January 9, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–1184 Filed 1–12–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; Federal Energy Management Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy; Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92—463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. This notice announces the second meeting of FEMAC, an advisory committee established under Executive Order 13123, ''Greening the Government through Efficient Energy Management.''

DATES: Thursday, January 25, 2001; 1:30 p.m. to 5:00 p.m.; Friday, January 26, 2001; 9:00 a.m. to 4:00 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Steven Huff, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–3507.

SUPPLEMENTARY INFORMATION:

Purpose of meeting: To provide advice and guidance on Federal Energy Management.

Tentative Agenda: Agenda will include discussions on the following:

Thursday, January 25, 2001, and Friday, January 26, 2001

- Federal energy management budget
- Energy-savings performance contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technologies (including clean energy technologies) at Federal facilities
- Public comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Steven Huff at (202) 586–3507 or *Steven.Huff@ee.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 10, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–1183 Filed 1–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–201–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 9, 2001.

Take notice that on December 29, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of February 1, 2001:

Forty-eighth Revised Sheet No. 25
Forty-eighth Revised Sheet No. 26
Forty-eighth Revised Sheet No. 27
Forty-third Revised Sheet No. 28
Fifth Revised Sheet No. 28B
Sixteenth Revised Sheet No. 29
Twenty-second Revised Sheet No. 30A

Columbus states that this filing is being submitted pursuant to an order issued September 15, 1999, the Federal Energy Regulatory Commission (Commission) approved an uncontested settlement that resolves environmental cost recovery issues in the above-referenced proceeding. *Columbia Gas Transmission Corporation,* 88 FERC ¶ 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

Columbia is required to file annually a limited NGA Section 4 filing to adjust its environmental unit components effective February 1 to recover its environmental costs covered by the Phase II Settlement, within agreed-upon ceilings and recovery percentages. For the annual period February 1, 2001 through January 31, 2002, the Phase II Settlement permits Columbia to collect ''no more than $14 million annually in Main Program Costs'', and ''no more than $3 million annually in Storage Well Program Costs.'' Article VI(B) of the Phase II Settlement. The instant filing satisfies that requirement. It provides for the February 1, 2001 effectiveness of revised unit components designed to collect $7.8 million in Main Program Costs and $2.8 million of Storage Well Program Costs

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–1145 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2566–010; Project No. 11616–000]

Consumers Energy Company, City of Portland, MI; Notice of Section 10(j) Teleconference

January 9, 2001.

a. Date and Time of Meeting: January 31, 2001, 10 am EST.

b. FERC Contact: Tom Dean at (202) 219–2778; thomas.dean@ferc.fed.us.

c. Purpose of the Teleconference: The Federal Energy Regulatory Commission, the Michigan Department of Natural Resources, and the U.S. Fish and Wildlife Service intend to discuss the resource agency's recommendations that were not recommended for adoption in the Portland Municipal Hydroelectric Project No. 11616–000 and the Webber Hydroelectric Project No. 2566–010 draft environmental assessment issued on September 19, 2000.

d. Proposed Agenda:

A. Introduction
   Recognition of Participants
   Teleconference Procedures and Objectives
B. Section 10(j) issues discussion
C. Issues outside of Section 10(j)
D. Summary of meeting
E. Follow-up actions

e. Anyone wishing to participate in the teleconference should call toll free, 1–888–399–8606. The caller will need to give the operator the passcode ''Dean'', and the team leader name ''Thomas Dean'', to join the teleconference.

David P. Boergers,

Secretary.

[FR Doc. 01–1140 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–544–000]

Cook Inlet Power, LP; Notice of Issuance of Order

January 9, 2001.

Cook Inlet Power, LP (Cook Inlet) submitted for filing a rate schedule under which Cook Inlet will engage in wholesale electric power and energy transactions at market-based rates. Cook Inlet also requested waiver of various Commission regulations. In particular, Cook Inlet requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cook Inlet.

On January 3, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cook Inlet should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Cook Inlet is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cook Inlet's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 2, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–1135 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–163–002]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 9, 2001.

Take notice that on January 3, 2001, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with an effective date of January 1, 2001:

Second Substitute Fourth Revised Sheet No. 32.

DTI states that the purpose of this filing is to amend the tariff sheet referenced above, in accordance with the Commission's December 27, 2000 Letter Order.

DTI states that copies of its letter of transmittal and enclosures have been served upon all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1139 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–545–000]

Duke Energy Lee, LLC; Notice of Issuance of Order

January 9, 2001.

Duke Energy Lee, LLC (Duke Lee) submitted for filing a rate schedule under which Duke Lee will engage in wholesale electric power and energy transactions at market-based rates. Duke Lee also requested waiver of various Commission regulations. In particular, Duke Lee requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Lee.

On January 5, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Lee should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Lee is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Lee's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 5, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–1134 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–195–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing of Reconciliation Report

January 9, 2001.

Take notice than on December 19, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its annual reconciliation filing pursuant to Section 35 (Crediting of Imbalance Revenue) of its General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT states that it has served copies of the filing upon all jurisdictional customers, interested State Commission, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 16, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1144 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–015]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 9, 2001.

Take notice that on January 4, 2001 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourth Revised Sheet No. 12, with a proposed effective date of February 3, 2001.

National Fuel states that the filing is made to revise two negotiated rate agreements between National Fuel and TXU Energy Trading Company, accepted by the Commission by order dated April 6, 2000, in Docket No. RP96–331–013. The revised charges would take effect upon April 1, 2001, when the second contract year commences.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1143 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–202–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 9, 2001.

Take notice that on December 29, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective January 1, 2001.

Thirty First Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 7.15 cents per dth.

Further National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (''IG'') rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 39 cents per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1147 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–176–027, RP99–176–028, RP99–176–029, and RP99–176–030]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

January 9, 2001.

Take notice that on January 4, 2001, Natural Gas Pipeline Company of America (Natural) tenders for filing with the Commission, its FTS–SW Agreement No. 118138, in Docket Nos. RP99–176–027 and RP99–176–028.

Natural as also tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, in Docket Nos. RP99–176–029 and RP99–176–030, the following tariff sheets, to be effective November 22, 2000:

Fourteenth Revised Sheet No. 3
Substitute Original Sheet No. 260
Original Sheet No. 414
Sheet Nos. 415–499

Natural states that the purpose of this filing is to comply with the Commission's ''Order Accepting Tariff Sheet and Negotiated Rate Agreement Subject to Conditions'' issued on December 20, 2000, in Docket Nos. RP99–176–022 and RP99–176–023 (Order).

Natural requests waiver of the Commission's Regulations to the extend necessary to permit the revised tariff sheets to become effective November 22, 2000.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in Determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1142 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–62–000]

Northwest Pipeline Corporation; Notice of Application

January 9, 2001.

Take notice that on January 5, 2001, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP01–62–000 an application pursuant to Section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Northwest to install and operate, on a temporary and limited basis, three existing portable compressor units to provide incremental horsepower and physical capacity at its existing Kemmerer, Pegram and Lava Hot Springs Compressor Stations in Wyoming and Idaho all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Northwest proposes to establish an additional secondary function for its three portable compressor units that current have a primary function of temporarily replacing out-of-service

permanent compressor units.[1] Specifically, when the temporary units are not required for their primary function, Northwest will operate the units to temporarily supplement northflow capacity through the Kemmerer, Wyoming to Pegram, Idaho segment (the Kemmerer Corridor) of its system. The increased northflow capacity will reduce the level of operational flow orders issued to provide sufficient displacement capacity to accommodate firm contractual obligations through the Kemmerer Corridor. Northwest states that the temporary supplemental compression will increase the physical northflow capacity through the Kemmerer Corridor by about 22 MDth per day.

Any questions regarding the application should be directed to Gary K. Kotter, Manager, Certificates, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900 at 801–584–7117 or at garold.k.kotter@williams.com.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 19, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents field by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents field by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–1137 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Two of the portable compressor units have a current secondary function by virtue of Northwest's blanket authority to operate the portable units at two compressor sites in Washington state when necessary to augment southflow in order to offset displacement capacity shortfalls.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER–01–562–000]

SEI Michigan, L.L.C.; Notice of Issuance of Order

January 9, 2001.

SEI Michigan, L.L.C. (SEI) submitted for filing a rate schedule under which SEI will engage in wholesale electric power and energy transactions at market-based rates. SEI also requested waiver of various Commission regulations. In particular, SEI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SEI.

On January 5, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SEI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SEI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SEI's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene

or protests, as set forth above, is February 5, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–1136 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–205–000]

Southern Natural Gas Company; Notice of Tariff Filing

January 9, 2001.

Take notice that on December 29, 2000, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing, with an effective date of February 1, 2001.

Southern states that the purpose of the filing is to permit Southern to charge negotiated rates for its storage and transportation services in accordance with the Statement of Policy issued by the Commission on January 31, 1996 in Docket No. RP95–6–000 (Policy Statement). Southern states that the tariff sheets include a new Section to its General Terms and Conditions describing the terms and conditions under which it would perform negotiated rate transactions and conforming language to other sections of the Tariff to reflect the ability of Southern to charge negotiated rates.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing maybe viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1146 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–20–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 9, 2001.

Take notice that on December 29, 2000 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective February 1, 2001.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 10% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$0.017/dth	$.0001/dth	$.0007/dth.
Market 2	$0.051/dth	$.0002/dth	$.0019/dth.
Market 3	$0.074/dth	$.0002/dth	$.0026/dth.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with with Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1141 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–000]

Texas Gas Transmission Corporation; Notice of Settlement Conference

January 9, 2001.

Take notice that an informal settlement conference will be convened in this procedure at 10:00 am on Tuesday, January 16 and possibly continuing to January 17, 2001, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of discussing the settlement of issues in the proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins at (202) 208–0248.

David P. Boergers,

Secretary.

[FR Doc. 01–1148 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–191–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

January 9, 2001.

Take notice that on December 15, 2000, Transcontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of refunds received from Dominion Transmission, Inc.

On December 15, 2000, in accordance with Section 4 of its Rate Schedule LSS and Section 3 of its Rate Schedule GSS, Transco states that it refunded to its LSS and GSS customers $336,777.46 resulting from the refund of Dominion Transmission, Inc. Docket No. TM00–1–22–00. The refund covers the period from November 1999 to June 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 16, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us//online/rims.htm (call 202–208–222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/dorrbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–1138 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR01–2–000, et al.]

Big West Oil Company, et al.; Electric Rate and Corporate Regulation Filings

January 8, 2001.

Take notice that the following filings have been made with the Commission:

1. Big West Oil Company v. Frontier Pipeline Company and Express Pipeline Partnership

[Docket No. OR01–2–000]

Take notice that on January 5, 2001, Big West Oil Company (Big West), tendered for filing a complaint against Frontier Pipeline Company (Frontier) and Express Pipeline Partnership (Express).

Big West states that it is a shipper of crude oil on tariffs filed by Frontier as well as on joint tariffs published by Frontier and Express for the shipment of crude petroleum between International Boundary, Canada and Salt Lake City, Utah. Big West further alleges that the rates being charged on the Frontier tariff and on the Frontier portion of the Frontier/Express joint tariffs are unjust and unreasonable and unduly discriminatory and unduly preferential, and therefore in violation of the Interstate Commerce Act.

Comment date: January 25, 2001, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be filed on or before January 25, 2001.

2. PSEG Power New York Inc.

[Docket No. ER01–643–001]

Take notice that on January 3, 2001, PSEG Power New York Inc. (PSEG Power New York), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994), and Part 35 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 35, an amended application for waiver of certain filing requirements associated with the production of electric capacity, energy and ancillary services generated at the Albany Steam Station by PSEG Power New York.

Comment date: January 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. EWO Marketing, L.P.

[Docket No. ER01–666–001]

Take notice that on December 28, 2000, EWO Marketing, L.P., tendered for filing an amendment to its application for authorization to sell wholesale power at market-based rates pursuant to Section 205 of the Federal Power Act.

Copies of this filing have been served upon all parties listed on the official service list maintained by the Secretary of the Commission for these proceedings.

Comment date: January 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Axia Energy, L.P.

[Docket No. ER01–667–001]

Take notice that on December 28, 2000, Axia Energy, L.P., tendered for filing an amendment to its application for authorization to sell wholesale power at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment date: January 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER00–3419–001]

Take notice that on January 4, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing with the Commission service agreement designations as required by Order No. 614.

Illinois Power requests a waiver of the 30-day filing requirement set forth in the Commission's order of October 18, 2000 in this proceeding.

Comment date: January 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER01–651–000]

Take notice that on January 3, 2001, Southwestern Electric Power Company (SWEPCO), tendered for filing an amendment to SWEPCO's December 12, 2000, filing in the above-captioned proceeding. The amendment contains the exhibits to the testimony of Samuel C. Hadaway, Exhibits SWP–2 through SWP–7. The exhibits were inadvertently omitted from the December 12, 2000 filing.

SWEPCO states that a copy of the amended filing has been served on the affected customers and on the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: January 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. United States Department of Energy, Bonneville Power Administration

[Docket No. EF01–2011–000]

Take notice that on January 5, 2001, the Bonneville Power Administration (BPA) tendered for filing a proposed rate adjustment to its Unauthorized Increase Charge (UAI) contained in the 1996 General Rate Schedule Provisions, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). BPA seeks interim approval of its proposed rates effective February 1, 2001, pursuant to Commission Regulation 300.20, 18 CFR 300.20. Pursuant to Commission Regulation 300.21, 18 CFR 300.21, BPA seeks interim approval and final confirmation of the proposed rates for the periods set forth in this notice.

BPA requests approval effective February 1, 2001, through September 30, 2001, for the proposed rate adjustment to its Unauthorized Increase Charge. BPA states that this approval is necessary for it to maintain the effectiveness of the penalty nature of the UAI Charge.

Comment date: January 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Delta Person Limited Partnership

[Docket No. ER01–138–001]

Take notice that on December 29, 2000, Delta Person Limited Partnership (Delta), tendered for filing its redesignated FERC Rate Schedule No. 1 in accordance with the Commission's letter order in the above-referenced docket.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER01–848–000]

Take notice that on December 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing, pursuant to Section 35.12 of the Commission's regulations, 18 CFR 35.12, a Service Agreement with Wisconsin Public Power, Inc. (WPPI) pursuant to Wisconsin Electric's FERC Electric Tariff Second Revised Volume No. 2 for the provision of Dynamic Regulation and Frequency Response Service and Energy Imbalance Service to load served by WPPI and located within the historic, geographically-defined control areas operated by Wisconsin Power & Light Company and Wisconsin Public Service Corporation.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER01–849–000]

Take notice that on December 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing, pursuant to Section 35.12 of the Commission's regulations, 18 CFR 35.12, a Wholesale Distribution Delivery Service Agreement between Wisconsin Electric and the City of Oconto Falls, Wisconsin (Oconto Falls) for the provision of wholesale distribution service to Oconto Falls beginning January 1, 2001.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER01–850–000]

Take notice that on December 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, a Wholesale Distribution Delivery Service Agreement between Wisconsin Electric and Wisconsin Public Power, Inc. (WPPI). The purpose of the agreement is to provide wholesale distribution service to five of WPPI's members—the City of Cedarburg, Wisconsin, the City of Lake Mills, Wisconsin, the City of Slinger, Wisconsin, the City of Waterloo, Wisconsin, and the City of New London, Wisconsin.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company, Select Energy, Inc.

[Docket No. ER01–851–000]

Take notice that on December 29, 2000, Northeast Utilities Service Company (NUSCO) and Select Energy, Inc. (Select), tendered for filing under section 205 of the Federal Power Act four amendments to existing power supply agreements under which Holyoke Water Power Company (HWP) and Holyoke Power and Electric Company (HP&E) may sell electric power to Select, and purchase electric power from Select. Applicants state that the agreements extend the term of each power supply agreement by one additional year, to December 31, 2001.

The Applicants state that copies of this filing have been sent to HWP, HP&E, and Select.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Twelvepole Creek, LLC

[Docket No. ER01–852–000]

Take notice that on December 29, 2000, Twelvepole Creek, LLC, with an office located at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, which will own and operate a natural gas-fired electric generating facility to be constructed in Wayne County, West Virginia submitted for filing with the Federal Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1 which will enable Twelvepole Creek to engage in the sale of electric energy and capacity, and certain ancillary services at market-based rates.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER01–853–000]

Take notice that on December 29, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance material to permit NEPOOL to expand its membership to include Amerada Hess Corporation (AHC) and to terminate the membership of Hess Energy, Inc., (HEI).

NEPOOL requests a January 1, 2001 effective date for the commencement of AHC participation in and the termination of HEI from NEPOOL.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commission and the Participants in NEPOOL.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. American Transmission Company LLC

[Docket No. ER01–854–000]

Take notice that on December 29, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement and Network Integration Transmission Service Agreement between ATCLLC and Wisconsin Public Service Corporation.

ATCLLC requests an effective date of January 1, 2001.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company, LLC

[Docket No. ER01–855–000]

Take notice that on December 29, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a fully executed Coordinated Operating Agreement, dated December 22, 2000 between Wisconsin Electric and Consumers Energy Company.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Bangor Hydro Electric Company

[Docket No. ER01–856–000]

Take notice that on December 29, 2000, Bangor Hydro-Electric Company tendered for filing Notices of Cancellation of its FERC Electric Rate Schedules Nos. 7 (Eastern Maine Electric Cooperative, Inc.), 27 (Swan's Island Electric Cooperative), and 52 (Isle Au Haut Electric Power Company) to be effective March 1, 2001.

Copies of the filing were served upon the affected purchasers, Swan's Island Electric Cooperative, Eastern Maine Electric Cooperative, Inc., Isle Au Haut Electric Power Company, the Maine Public Utilities Commission, and Maine Public Advocate.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–857–000]

Take notice that on January 2, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 96 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of September 11, 2000 for Oglethorpe Power Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER01–858–000]

Take notice that on December 29, 2000, Commonwealth Edison Company tendered for filing an Interconnection Agreement with Calpine Morris, LLC and Equistar Chemicals, LP to interconnect a 167 MW plant to the ComEd system at Morris, Illinois.

ComEd requests waiver of the prior notice requirements and an effective date of January 1, 2001.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Corporation

[Docket No. ER01–860–000]

Take notice that on December 29, 2000, Duke Energy Corporation (Duke), tendered for filing amendments to its May 2, 1997 Contract with the Southeastern Power Administration.

Duke requests that the amendments be made effective January 1, 2001.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER01–861–000]

Take notice that on December 29, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with Bonneville Power Administration (Bonneville) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–865–000]

Take notice that on January 2, 2001, Alliant Energy Corporate Services, Inc., (Alliant Energy) on behalf of Wisconsin Power & Light (WPL) and Interstate Power Company (IPC) tendered for filing a Negotiated Capacity Transaction (Agreement) between WPL and IPC for the period January 1, 2001 through December 31, 2001. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–862–000]

Take notice that on January 2, 2001, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light (WPL) tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period January 1, 2001 through December 31, 2001. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–863–000]

Take notice that on January 2, 2001, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Wisconsin Power & Light (WPL) and IES Utilities Inc. (IESU), tendered for filing a Negotiated Capacity Transaction (Agreement) between WPL and IESU for the period January 1, 2001 through December 31, 2001. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–864–000]

Take notice that on January 2, 2001, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) and Wisconsin

Power & Light (WPL) tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period December 1, 2000] through March 31, 2001. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant Energy.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Citizens Communications Company

[Docket No. ER00–3211–001]

Take notice that on January 2, 2001, Citizens Communications Company in compliance with the Commission's August 17, 2000] letter order in this proceeding, tendered for filing revised tariffs and rate schedules to reflect its name change and other designation requirements of Order No. 614.

A copy of this filing was served on the service list in this Docket, and on each of Citizens Communications Company's wholesale customers. In addition, a copy is available for inspection at the offices of Citizens' Vermont Electric Division during regular business hours.

Comment date: January 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Lighthouse Energy Trading Company, Inc.

[[Docket No. ER01–174–001]

Take notice that on December 28, 2000, Lighthouse Energy Trading Company, Inc., a South Dakota Corporation (Lighthouse), tendered for filing an amended Rate Schedule FERC No. 1, in compliance with the Commission's Order No. 614.

Lighthouse intends to engage in wholesale electric power and energy purchases and sales as a marketer. Lighthouse is not in the business of generating or transmitting electric power.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Naniwa Energy LLC

[Docket No. ER01–457–001]

Take notice that on December 28, 2000, Naniwa Energy LLC tendered for filing an amendment to its initial rate filing in the above-captioned proceeding.

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–478–001]

Take notice that on December 28, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered the conformed title page of the Indian Point 3 Interconnection Agreement, dated as of November 9, 2000, by and between Con Edison and Entergy Nuclear Indian Point 3, LLC, in the above-captioned

Comment date: January 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–1133 Filed 1–12–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6932–9]

Public Water System Supervision Program Revision for the State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Alabama is revising its approved Public Water System Supervision Program. Alabama has adopted drinking water regulations establishing administrative penalty authority, and which revise the definition of a Public Water System. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by February 15, 2001, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 15, 2001, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 15, 2001. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Alabama Department of Environmental Management, Water Division, Water Supply Branch, 1400 Coliseum Boulevard, Montgomery, Alabama 36110–2059; or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Tom Plouff, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9476.

SUPPLEMENTARY INFORMATION

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Parts 141 and 142.

Dated: December 20, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, EPA Region 4.

[FR Doc. 01–1051 Filed 1–12–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–1]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 fourth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 fourth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before March 2, 2001.

ADDRESSES: Bank members selected for the 2000–01 fourth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 et seq., and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the March 2, 2001 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before January 29, 2001, each Bank will notify the members in its district that have been selected for the 2000–01 fourth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 fourth quarter community support review cycle:

FEDERAL HOME LOAN BANK OF BOSTON—DISTRICT 1

Union Savings Bank	Danbury	Connecticut.
Jewett City Savings Bank	Jewett City	Connecticut.
First National Bank of Litchfield, IL	Litchfield	Connecticut.
Naugatuck Valley Savings & Loan Association	Naugatuck	Connecticut.
The New Haven Savings Bank	New Haven	Connecticut.
Newtown Savings Bank	Newtown	Connecticut.
Fairfield County Savings Bank	Norwalk	Connecticut.
Ridgefield Bank	Ridgefield	Connecticut.
First County Bank	Stamford	Connecticut.
Northeast Bank, F.S.B.	Auburn	Maine.
Bangor Savings Bank	Bangor	Maine.
Bar Harbor Savings and Loan Association	Bar Harbor	Maine.
First Citizens Bank	Presque Isle	Maine.
South Adams Savings Bank	Adams	Massachusetts.
Andover Bank	Andover	Massachusetts
Barre Savings Bank	Barre	Massachusetts.
Brookline Savings Bank	Brookline	Massachusetts.
Boston Federal Savings Bank	Burlington	Massachusetts.
Cambridgeport Bank	Cambridge	Massachusetts.
North Cambridge Co-operative Bank	Cambridge	Massachusetts.
Canton Co-operative Bank	Canton	Massachusetts.
The Edgartown National Bank	Edgartown	Massachusetts.
First Federal Savings Bank of America	Fall River	Massachusetts.

Fidelity Co-operative Bank	Fitchburg	Massachusetts.
Fitchburg Savings Bank, FSB	Fitchburg	Massachusetts.
Greenfield Co-operative Bank	Greenfield	Massachusetts.
Haverhill Co-operative Bank	Haverhill	Massachusetts.
Hyde Park Cooperative Bank	Hyde Park	Massachusetts.
Ipswich Co-operative Bank	Ipswich	Massachusetts.
Lowell Co-operative Bank	Lowell	Massachusetts.
Medford Bank	Medford	Massachusetts.
Milford National Bank and Trust Company	Milford	Massachusetts.
Natick Federal Savings Bank	Natick	Massachusetts.
Revere Federal Savings & Loan Association	Revere	Massachusetts.
Heritage Co-operative Bank	Salem	Massachusetts.
Salem Five Cents Savings Bank	Salem	Massachusetts.
People's Savings Bank of Brockton	South Easton	Massachusetts.
Stoneham Savings Bank	Stoneham	Massachusetts.
Country Bank for Savings	Ware	Massachusetts.
Wellesley Co-operative Bank	Wellesley	Massachusetts.
South Shore Cooperative Bank	Weymouth	Massachusetts.
Winchester Co-operative Bank	Winchester	Massachusetts.
Bay State Savings Bank	Worcester	Massachusetts.
Cape Cod Co-operative Bank	Yarmouth Port	Massachusetts.
The Berlin City Bank	Berlin	New Hampshire
Village Bank and Trust	Gilford	New Hampshire.
Granite Bank	Keene	New Hampshire.
Lancaster National Bank	Lancaster	New Hampshire.
Profile Bank	Rochester	New Hampshire.
Bank of Newport	Newport	Rhode Island.
Citizens Bank of Rhode Island	Providence	Rhode Island.
Westerly Savings Bank	Westerly	Rhode Island.
Brattleboro Savings and Loan Association, FA	Brattleboro	Vermont.
Lyndonville Savings Bank and Trust Company	Lyndonville	Vermont.

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2

Cape Savings Bank	Cape May Court House	New Jersey.
United Roosevelt Savings Bank	Carteret	New Jersey.
Commerce Bank, N.A.	Cherry Hill	New Jersey.
Unity Bank	Clinton	New Jersey.
First Constitution Bank	Cranbury	New Jersey.
Delanco Federal Savings Bank	Delanco	New Jersey.
Columbia Savings Bank	Fair Lawn	New Jersey.
Haven Savings Bank	Hoboken	New Jersey.
Manasquan Savings Bank	Manasquan	New Jersey.
Equity Bank	Marlton	New Jersey.
West Essex Bank	Pine Brook	New Jersey.
First Bank of Sea Isle City	Seaville	New Jersey.
Union Center National Bank	Union	New Jersey.
Wawel Savings Bank, SLA	Wallington	New Jersey.
Crest Savings Bank, SLA	Wildwood Crest	New Jersey.
Charter One Commercial	Albany	New York.
Bridgehampton National Bank	Bridgehampton	New York.
Atlas Savings and Loan Association	Brooklyn	New York.
Tompkins County Trust Company	Ithaca	New York.
Medina Savings & Loan Association	Medina	New York.
Isreal Discount Bank of New York	New York	New York.
NBT Bank, N.A.	Norwich	New York.
The Oneida Savings Bank	Oneida	New York.
Suffolk County National Bank of Riverhead	Riverhead	New York.
Adirondack Bank, N.A.	Saranac Lake	New York.
Sawyer Savings Bank	Saugerties	New York.
Bank of Smithtown	Smithtown	New York.
Walden Federal Savings and Loan Association	Walden	New York.
Fourth Federal Savings Bank	White Plains	New York.
City & Suburban Federal Savings Bank	Yonkers	New York.
Westernbank Puerto Rico	Mayaguez	Puerto Rico.
Banco Bilbao Vizcaya Puerto Rico	Santurce	Puerto Rico.

FEDERAL HOME LOAN BANK OF PITTSBURGH—DISTRICT 3

Christiana Bank and Trust Company	Greenville	Delaware.
The First National Bank of Wyoming	Wyoming	Delaware.
American Bank of the Lehigh Valley	Allentown	Pennsylvania.
Iron Workers Savings Bank	Aston	Pennsylvania.
Pennwood Savings Bank	Bellevue	Pennsylvania.
Brentwood Savings Bank	Bethel Park	Pennsylvania.
Madison Bank	Blue Bell	Pennsylvania.
National Penn Bank	Boyertown	Pennsylvania.

Union Building and Loan Savings Bank	Bridgewater	Pennsylvania.
Carnegie Savings Bank	Carnegie	Pennsylvania.
Suburban Community Bank	Chalfont	Pennsylvania.
Community Bank and Trust Company	Clarks Summit	Pennsylvania.
Clearfield Bank and Trust Company	Clearfield	Pennsylvania.
Vartan National Bank	Dauphin	Pennsylvania.
First Financial Bank	Downingtown	Pennsylvania.
First County Bank	Doylestown	Pennsylvania.
The Dime Bank	Honesdale	Pennsylvania.
Indiana First Savings Bank	Indiana	Pennsylvania.
Manor National Bank	Manor	Pennsylvania.
First National Bank of Marysville	Marysville	Pennsylvania.
Standard Bank PaSB	Monroeville	Pennsylvania.
Commonwealth Bank	Norristown	Pennsylvania.
Roxborough-Manayunk Bank	Philadelphia	Pennsylvania.
Mt. Troy Savings Bank, FSB	Pittsburgh	Pennsylvania.
PNC Bank, N.A.	Pittsburgh	Pennsylvania.
Pennsylvania Capital Bank	Pittsburgh	Pennsylvania.
Schuylkill Savings & Loan Association	Schuylkill Haven	Pennsylvania.
Somerset Trust Company	Somerset	Pennsylvania.
Omega Bank, N.A.	State College	Pennsylvania.
Mechanics Savings and Loan FSB	Steelton	Pennsylvania.
Compass Federal Savings Bank	Wilmerding	Pennsylvania.
Sovereign Bank, FSB	Wyomissing	Pennsylvania.
Capital State Bank, Inc.	Charleston	West Virginia.
Hancock County Savings Bank, F.S.B.	Chester	West Virginia.
Citizens National Bank of Elkins	Elkins	West Virginia.
Monongahela Valley Bank, Inc.	Fairmont	West Virginia.
Fayette County National Bank	Fayetteville	West Virginia.
Rock Branch Community Bank	Nitro	West Virginia.
The Bank of Romney	Romney	West Virginia.
Traders Bank	Spencer	West Virginia.
Progressive Bank	Wheeling	West Virginia.

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4

First Federal Savings Bank	Bessemer	Alabama.
Citizens Federal Savings Bank	Birmingham	Alabama.
SouthTrust Bank, N.A.	Birmingham	Alabama.
First Federal Bank	Fort Payne	Alabama.
City Bank of Hartford	Hartford	Alabama.
Pinnacle Bank	Jasper	Alabama.
Farmers National Bank	Opelika	Alabama.
First Federal Bank, a fsb	Tuscaloosa	Alabama.
Amerifirst Bank N.A.	Union Springs	Alabama.
The Bank of Delmar, N.A.	Seaford	Delaware.
Independence Federal Savings Bank	Washington	D.C.
Community National Bank at Bartow	Bartow	Florida.
First Southern Bank	Boca Raton	Florida.
Crown Bank, a fsb	Casselberry	Florida.
Harbor Federal Savings Bank	Fort Pierce	Florida.
Homosassa Springs Bank	Homosassa Springs	Florida.
First Federal Savings Bank of Lake County	Leesburg	Florida.
City National Bank of Florida	Miami	Florida.
Interamerican Bank	Miami	Florida.
Intercredit Bank, N.A.	Miami	Florida.
Pacific National Bank	Miami	Florida.
Farmers and Merchants Bank	Monticello	Florida.
First National Bank of Naples	Naples	Florida.
Union Bank of Florida	Plantation	Florida.
First Community Bank of America	Port Charlotte	Florida.
First South Bank	Tallahassee	Florida.
Valrico State Bank	Valrico	Florida.
Fidelity Federal Savings Bank of Florida	West Palm Beach	Florida.
Bank of North Georgia.	Alpharetta	Georgia.
First Port City Bank	Bainbridge	Georgia.
Baxley Federal Savings Bank	Baxley	Georgia.
Peoples State Bank & Trust	Baxley	Georgia.
West Georgia National Bank	Carrollton	Georgia.
The Bank of Fitzgerald	Fitzgerald	Georgia.
Glennville Bank and Trust Company	Glennville	Georgia.
Commercial Banking Company	Hahira	Georgia.
First Flag Bank	LaGrange	Georgia.
Security Bank of Bibb County	Macon	Georgia.
Riverside Bank	Marietta	Georgia.
Quitman Federal Savings Bank	Quitman	Georgia.

Citizens Bank of Washington County	Sandersville	Georgia.
First National Bank of Effingham	Springfield	Georgia.
Eagle Bank and Trust	Statesboro	Georgia.
Bank of Worth	Sylvester	Georgia.
Thomas County FS&LA	Thomasville	Georgia.
Stephens Federal Bank	Toccoa	Georgia.
Mountain National Bank	Tucker	Georgia.
Darby Bank and Trust Company	Vidalia	Georgia.
Vidalia Federal Savings and Loan Association	Vidalia	Georgia.
Bank of Dooly	Vienna	Georgia.
The Peoples Bank of Willacoochee	Willacoohee	Georgia.
The Peoples Bank	Winder	Georgia.
Arundel Federal Savings Bank	Baltimore	Maryland.
Chesapeake Bank of Maryland	Baltimore	Maryland.
Fairmount Federal Savings Bank	Baltimore	Maryland.
Golden Prague FS&LA	Baltimore	Maryland.
Hopkins Federal Savings Bank	Baltimore	Maryland.
Madison Square Federal Savings Bank	Baltimore	Maryland.
Parkville Federal Savings Bank	Baltimore	Maryland.
Rosedale Federal Savings and Loan Association	Baltimore	Maryland.
Westview Savings Bank	Baltimore	Maryland.
The Washington Savings Bank, F.S.B.	Bowie	Maryland.
The Patapsco Bank	Dundalk	Maryland.
Farmers & Mechanics National Bank	Frederick	Maryland.
OBA Federal Savings and Loan Association	Gaithersburg	Maryland.
Columbian Bank, a F.S.B.	Havre de Grace	Maryland.
Suburban Federal Savings Bank	Landover Hills	Maryland.
Heritage Savings Bank	Lutherville	Maryland.
Senator Savings Bank, FSB	Towson	Maryland.
Community Bank of Tri-County	Waldorf	Maryland.
Woodsboro Bank	Woodsboro	Maryland.
Asheville Savings Bank	Asheville	North Carolina.
Community Savings Bank, SSB	Burlington	North Carolina.
First State Bank	Burlington	North Carolina.
Cherryville FS&LA	Cherryville	North Carolina.
First Federal Savings Bank	Dunn	North Carolina
Mutual Community Savings Bank, SSB	Durham	North Carolina
First Federal Savings and Loan Association	Lincolnton	North Carolina.
Progressive Savings and Loan Ltd.	Lumberton	North Carolina.
Mooresville Savings Bank, SSB	Mooresville	North Carolina.
Roxboro Savings Bank, SSB	Roxboro	North Carolina.
Citizens Savings Bank of Salisbury, SSB	Salisbury	North Carolina.
Home Savings, Inc., SSB	Thomasville	North Carolina.
FirstSouth Bank	Washington	North Carolina.
Abbeville Savings and Loan Association	Abbeville	South Carolina.
The Bank of Abbeville	Abbeville	South Carolina.
First FS&LA of Cheraw	Cheraw	South Carolina.
First Savers Bank	Greenville	South Carolina.
Citizens Building and Loan Association	Greer	South Carolina.
Mutual Savings Bank	Hartsville	South Carolina.
Atlantic Savings Bank, FSB	Hilton Head Island	South Carolina.
Pee Dee Federal Savings Bank	Marion	South Carolina.
Coastal Federal Savings Bank	Myrtle Beach	South Carolina.
Mid State Bank	Newberry	South Carolina.
Oconee Federal Savings and Loan Association	Seneca	South Carolina.
First Federal Bank	Spartanburg	South Carolina.
Community First Bank	Walhalla	South Carolina.
First Federal of South Carolina, F.S.B.	Walterboro	South Carolina.
Citizens Bank and Trust Company	Blackstone	Virginia.
Caroline Savings Bank	Bowling Green	Virginia.
Acacia Federal Savings Bank	Falls Church	Virginia.
First Virginia Bank	Falls Church	Virginia.
Virginia Savings Bank, FSB	Front Royal	Virginia.
First FS&LA	Martinsville	Virginia.
Chevy Chase Bank, FSB	McLean	Virginia.
Harbor Bank	Newport News	Virginia.
CENIT Bank	Norfolk	Virginia.
Essex Savings Bank, FSB	Norfolk	Virginia.
Bank of Tazewell County	Tazewell	Virginia.
Approved Federal Savings Bank	Virginia Beach	Virginia.

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5

Home FS&LA of Ashland	Ashland	Kentucky.
Bank of Buffalo	Buffalo	Kentucky.
The First National Bank of Columbia	Columbia	Kentucky.

Kentucky Federal Savings and Loan Association	Covington	Kentucky.
Greensburg Deposit Bank & Trust Company	Greensburg	Kentucky.
Citizens National Bank & Trust of Hazard	Hazard	Kentucky.
The Casey County Bank	Liberty	Kentucky.
Independence Bank	Livermore	Kentucky.
Commonwealth Bank and Trust	Louisville	Kentucky.
Home Savings Bank, fsb	Ludlow	Kentucky.
Madisonville Building and Loan Association	Madisonville	Kentucky.
Bank of Maysville	Maysville	Kentucky.
Hart County Bank and Trust Company	Munfordville	Kentucky.
The Farmers Bank	Nicholasville	Kentucky.
Community Trust Bank, N.A.	Pikeville	Kentucky.
Cumberland Security Bank	Somerset	Kentucky.
Commercial Bank	West Liberty	Kentucky.
Antwerp Exchange Bank Company	Antwerp	Ohio.
Hocking Valley Bank	Athens	Ohio.
Citizens Federal Savings and Loan Association	Bellefontaine	Ohio.
The Guernsey Bank, FSB	Cambridge	Ohio.
Castalia Banking Company	Castalia	Ohio.
Mercer Savings Bank	Celina	Ohio.
Cheviot Building and Loan Company	Cheviot	Ohio.
Bramble Federal Savings & Loan	Cincinnati	Ohio.
Cincinnati Federal Savings & Loan Association	Cincinnati	Ohio.
North Side Bank and Trust Company	Cincinnati	Ohio.
National City Bank	Cleveland	Ohio.
Ohio Savings Bank	Cleveland	Ohio.
The Home Loan Savings Bank	Coshocton	Ohio.
The Covington Savings and Loan Association	Covington	Ohio.
The Delaware County Bank and Trust Company	Delaware	Ohio.
The Northern Savings and Loan Company	Elyria	Ohio.
The Genoa Savings and Loan Company	Genoa	Ohio.
Indian Village FS&LA	Gnadenhutten	Ohio.
The Hicksville Bank	Hicksville	Ohio.
Home Builders Association	Lynchburg	Ohio.
The Citizens Savings Bank	Martins Ferry	Ohio.
People's Building, Loan and Savings Company	Mason	Ohio.
Peoples FS&LA of Massillon	Massillon	Ohio.
Clermont Savings Bank, FSB	Milford	Ohio.
The Commercial & Savings Bank of Millersburg	Millersburg	Ohio.
The First National Bank of Nelsonville	Nelsonville	Ohio.
Peoples National Bank	New Lexington	Ohio.
Geauga Savings Bank	Newbury	Ohio.
The First National Bank of Pandora	Pandora	Ohio.
Century Bank, F.S.B.	Parma	Ohio.
Farmers Bank and Savings Company	Pomeroy	Ohio.
Capital Bank, N.A.	Sylvania	Ohio.
The Commercial Savings Bank	Upper Sandusky	Ohio.
Versailles Savings and Loan Company	Versailles	Ohio.
The Wayne Savings Community Bank	Wooster	Ohio.
Commerce National Bank	Worthington	Ohio.
The Home Savings and Loan Company	Youngstown	Ohio.
Century National Bank	Zanesville	Ohio.
Athens Federal Community Bank	Athens	Tennessee.
First National Bank and Trust Company	Athens	Tennessee.
Bells Banking Company	Bells	Tennessee.
Benton Banking Company	Benton	Tennessee.
People's Bank and Trust Company of Picket Co	Byrdstown	Tennessee.
Rhea County National Bank	Dayton	Tennessee.
Greenfield Banking Company	Greenfield	Tennessee.
First Peoples Bank of Tennessee	Jefferson City	Tennessee.
Lawrenceburg FS&LA	Lawrenceburg	Tennessee.
Community National Bank	Lexington	Tennessee.
Union Bank and Trust Company	Livingston	Tennessee.
BankTennessee	Memphis	Tennessee.
EFS National Bank	Memphis	Tennessee.
The Community Bank	Nashville	Tennessee.
First Trust and Savings Bank	Oneida	Tennessee.
Citizens Bank and Trust Company	Rutledge	Tennessee.
Bank of Waynesboro	Waynesboro	Tennessee.

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6

Peoples Trust Bank	Corydon	Indiana.
Heritage Bank and Trust Company	Darlington	Indiana.
Elberfield State Bank	Elberfield	Indiana.
Mutual Savings Bank	Franklin	Indiana.

Calumet National	Hammond	Indiana.
First FS&LA of Hammond	Hammond	Indiana.
Citizens First State Bank	Hartford City	Indiana.
First Indiana Bank, a FSB	Indianapolis	Indiana.
Farmers State Bank	LaGrange	Indiana.
Linden State Bank	Linden	Indiana.
MFB Financial	Mishawaka	Indiana.
St. Joseph Capital Bank	Mishawawka	Indiana.
West End Savings Bank	Richmond	Indiana.
Scott County State Bank	Scottsburg	Indiana.
Macomb Community	Clinton Township	Michigan.
Michigan State University FCU	East Lansing	Michigan.
MetroBank	Farmington Hills	Michigan.
Citizens Bank	Flint	Michigan.
Grand Haven Bank	Grand Haven	Michigan.
Old Kent Bank	Grand Rapids	Michigan.
D&N Bank, FSB	Hancock	Michigan.
Mainstreet Savings Bank, FSB	Hastings	Michigan.
The Bank of Holland	Holland	Michigan.
The Honor State Bank	Honor	Michigan.
Ionia County National Bank	Ionia	Michigan.
First National Bank of Iron Mountain	Iron Mountain	Michigan.
Mayville State Bank	Mayville	Michigan.
Wolverine Bank, F.S.B.	Midland	Michigan.
Central Savings Bank	Sault Ste. Marie	Michigan.
Sturgis Bank and Trust Company	Sturgis	Michigan.
First Savings Bank	Three Rivers	Michigan.
Standard Federal Bank, a FSB	Troy	Michigan.
Charter Bank	Wyandotte	Michigan.

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7

Citizens National Bank of Albion	Albion	Illinois.
Farmers State Bank of Western Illinois	Alpha	Illinois.
Apple River State Bank	Apple River	Illinois.
Arcola Homestead Savings Bank	Arcola	Illinois.
The First National Bank of Arcola	Arcola	Illinois.
The First National Bank of Arenzville	Arenzville	Illinois.
Ben Franklin Bank of Illinois	Arlington Heights	Illinois.
The Atlanta National Bank	Atlanta	Illinois.
First State Bank	Atwood	Illinois.
Scott State Bank	Bethany	Illinois.
First State Bank of Bloomington	Bloomington	Illinois.
Midland Federal Savings and Loan Association	Bridgeview	Illinois.
Farmers and Merchants State Bank of Bushnell	Bushnell	Illinois.
Byron Bank	Byron	Illinois.
First State Bank of Campbell Hill	Campbell Hill	Illinois.
Carrollton Bank	Carrollton	Illinois.
BankIllinois	Champaign	Illinois.
Bank of Chestnut	Chestnut	Illinois.
Chesterfield Federal S&LA of Chicago	Chicago	Illinois.
Hoyne Savings Bank	Chicago	Illinois.
Loomis Federal Savings and Loan Association	Chicago	Illinois.
North Side FS&LA of Chicago	Chicago	Illinois.
Royal Savings Bank	Chicago	Illinois.
Seaway National Bank of Chicago	Chicago	Illinois.
Second Federal Savings and Loan	Chicago	Illinois.
Central Federal Savings and Loan Association	Cicero	Illinois.
MidAmerica Bank, fsb	Clarendon Hills	Illinois.
Central State Bank	Clayton	Illinois.
DeWitt Savings Bank	Clinton	Illinois.
First Federal Bank, F.S.B.	Colchester	Illinois.
First United Bank	Crete	Illinois.
Soy Capital Bank and Trust Company	Decatur	Illinois.
Castle Bank, National Association	DeKalb	Illinois.
Union Bank of Illinois	East St. Louis	Illinois.
Galena State Bank and Trust Company	Galena	Illinois.
Community State Bank	Galva	Illinois.
Howard Savings Bank	Glenview	Illinois.
Security State Bank of Hamilton	Hamilton	Illinois.
Harvard Savings Bank	Harvard	Illinois.
First National Bank of La Grange	La Grange	Illinois.
Exchange State Bank	Lanark	Illinois.
The Lemont National Bank	Lemont	Illinois.
Lisle Savings Bank	Lisle	Illinois.
Bank and Trust Company	Litchfield	Illinois.

Union Bank/West	Macomb	Illinois.
Continental Community Bank & Trust Company	Maywood	Illinois.
A.J. Smith Federal Savings Bank	Midlothian	Illinois.
Southeast National Bank	Moline	Illinois.
Security Savings Bank	Monmouth	Illinois.
Farmers State Bank Chadwick and Mt. Carroll	Mt. Carroll	Illinois.
The First National Bank	Mulberry Grove	Illinois.
Hawthorn Bank	Mundelein	Illinois.
Warren-Boynton State Bank	New Berlin	Illinois.
Ottawa Savings Bank	Ottawa	Illinois.
State Bank of Paw Paw	Paw Paw	Illinois.
First Capital Bank	Peoria	Illinois.
The Heights Bank	Peoria Heights	Illinois.
Pleasant Plains State Bank	Pleasant Plains	Illinois.
Town and Country Bank of Quincy	Quincy	Illinois.
Rantoul First Bank, s.b.	Rantoul	Illinois.
First National Bank of Raymond	Raymond	Illinois.
First Ridge Farm State Bank	Ridge Farm	Illinois.
Community State Bank of Rock Falls	Rock Falls	Illinois.
Rushville State Bank	Rushville	Illinois.
AmericaUnited Bank & Trust Company USA	Schaumburg	Illinois.
Illini Bank	Springfield	Illinois.
Tuscola National Bank	Tuscola	Illinois.
Bank of Warrensburg	Warrensburg	Illinois.
State Bank Winslow-Warren	Winslow	Illinois.
The Portage County Bank	Almond	Wisconsin.
Pioneer Bank	Auburndale	Wisconsin.
First National Bank of Baldwin	Baldwin	Wisconsin.
The First National Bank and Trust Co. of Baraboo	Baraboo	Wisconsin.
Black River Country Bank	Black River Falls	Wisconsin.
Bonduel State Bank	Bonduel	Wisconsin.
Red Cedar Bank, N.A.	Boyceville	Wisconsin.
Dairyman's State Bank	Clintonville	Wisconsin.
Farmers and Merchants Union Bank	Columbus	Wisconsin.
Cumberland Federal Bank, FSB	Cumberland	Wisconsin.
Community Bank of Grafton	Grafton	Wisconsin.
Highland State Bank	Highland	Wisconsin.
Park Bank	Holmen	Wisconsin.
Security State Bank	Iron River	Wisconsin.
East Wisconsin Savings Bank, S.A.	Kaukauna	Wisconsin.
Greenwood's State Bank	Lake Mills	Wisconsin.
First Bank and Trust	Menomonie	Wisconsin.
Bank of Milton	Milton	Wisconsin.
Milwaukee Western Bank	Milwaukee	Wisconsin.
St. Francis Bank, F.S.B.	Milwaukee	Wisconsin.
Universal Savings Bank, F.A.	Milwaukee	Wisconsin.
Associated Bank, N.A.	Neenah	Wisconsin.
Clare Bank, N.A.	Platteville	Wisconsin.
First National Platteville	Platteville	Wisconsin.
Mound City Bank	Platteville	Wisconsin.
Intercity State Bank	Schofield	Wisconsin.
Community Bank & Trust	Sheboygan	Wisconsin.
Bank of Sun Prairie	Sun Prairie	Wisconsin.
First Federal Savings Bank of Wisconsin	Waukesha	Wisconsin.
KeySavings Bank	Wisconsin Rapids	Wisconsin.
River Cities Bank	Wisconsin Rapids	Wisconsin.
Wood County National Bank	Wisconsin Rapids	Wisconsin.

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8

Iowa Savings Bank	Carroll	Iowa.
Central Trust and Savings Bank	Cherokee	Iowa.
Linn County State Bank	Coggon	Iowa.
Farmers Savings Bank	Colesburg	Iowa.
Citizens Bank	Corydon	Iowa.
Fortress Bank of Cresco	Cresco	Iowa.
Valley State Bank	Eldridge	Iowa.
First National Bank in Fairfield	Fairfield	Iowa.
Farmers State Bank	Jesup	Iowa.
First State Bank of Mapleton	Mapleton	Iowa.
Farmers Savings Bank	Mt. Pleasant	Iowa.
New Vienna Savings Bank	New Vienna	Iowa.
First State Bank	Nora Springs	Iowa.
American State Bank	Osceola	Iowa.
Perry State Bank	Perry	Iowa.
Readlyn Savings Bank	Readlyn	Iowa.

Community Savings Bank	Robins	Iowa.
Premier Bank	Rock Valley	Iowa.
Iowa State Bank	Sac City	Iowa.
Sanborn Savings Bank	Sanborn	Iowa.
The State Bank	Spirit Lake	Iowa.
Union Bank and Trust Company	Strawberry Point	Iowa.
The State Bank of Toledo	Toledo	Iowa.
Farmers Savings Bank	Walford	Iowa.
Iowa State Bank	Wapello	Iowa.
Washington Federal Savings Bank	Washington	Iowa.
State Bank of Waverly	Waverly	Iowa.
First State Bank	Webster City	Iowa.
Union State Bank	Winterset	Iowa.
First State Bank of Bayport	Bayport	Minnesota.
CreditAmerica Savings Company	Brainerd	Minnesota.
The First National Bank of Coleraine	Coleraine	Minnesota.
Western National Bank	Duluth	Minnesota.
Fidelity Bank	Edina	Minnesota.
State Bank of Fairmont	Fairmont	Minnesota.
Citizens State Bank of Gaylord	Gaylord	Minnesota.
Commerce Bank	Geneva	Minnesota.
The First National Bank of Gilbert	Gilbert	Minnesota.
Yellow Medicine County Bank	Granite Falls	Minnesota.
Northwestern State Bank of Hallock	Hallock	Minnesota.
1st American State Bank of Minnesota	Hancock	Minnesota.
First Southeast Bank	Harmony	Minnesota.
First Federal fsb	Hutchinson	Minnesota.
United Prairie Bank—Jackson	Jackson	Minnesota.
Cornerstone State Bank	La Sueur	Minnesota.
First Community Bank Lester Prairie	Lester Prairie	Minnesota.
The State Bank of Loretto	Loretto	Minnesota.
First National Bank of Luverne	Luverne	Minnesota.
US Bank, N.A.	Minneapolis	Minnesota.
First National Bank of Montgomery	Montgomery	Minnesota.
United Farmers & Merchants State Bank	Morris	Minnesota.
Northland Community Bank	Northome	Minnesota.
Citizens State Bank of Norwood	Norwood Young America	Minnesota.
Odin State Bank	Odin	Minnesota.
Prinsburg State Bank	Prinsburg	Minnesota.
Randall State Bank	Randall	Minnesota.
Woodland Bank	Remer	Minnesota.
Richfield Bank and Trust Company	Richfield	Minnesota.
First Community Bank	Savage	Minnesota.
Home Federal Savings Bank	Spring Valley	Minnesota.
St. Anthony Park State Bank	St. Paul	Minnesota.
Heartland State Bank	Storden	Minnesota.
The Northwestern State Bank of Ulen	Ulen	Minnesota.
Wells Federal Bank, a FSB	Wells	Minnesota.
First State Bank of Pipestone, Rushmore	Worthington	Minnesota.
Worthington Federal Savings Bank, f.s.b.	Worthington	Minnesota.
First Missouri National Bank	Brookfield	Missouri.
BC National Banks	Butler	Missouri.
Carroll County Trust Company	Carrollton	Missouri.
Chillicothe State Bank	Chillicothe	Missouri.
Investors Federal Bank	Chillicothe	Missouri.
Boone National Savings & Loan Association, FA	Columbia	Missouri.
First State Community Bank	Farmington	Missouri.
Ozarks Federal Savings and Loan Association	Farmington	Missouri.
Bank Northwest	Hamilton	Missouri.
Town & Country Bank	Hardin	Missouri.
Allen Bank and Trust Company	Harrisonville	Missouri.
Bank of Hayti	Hayti	Missouri.
First National Bank	Houston	Missouri.
Kennett National Bank	Kennett	Missouri.
Bank of Kimberling City	Kimberling City	Missouri.
First National Bank	Lamar	Missouri.
Lamar Bank and Trust Company	Lamar	Missouri.
Central Bank	Lebanon	Missouri.
Linn State Bank	Linn	Missouri.
First National Bank	Malden	Missouri.
Pioneer Bank and Trust Company	Maplewood	Missouri.
Wood & Huston Bank	Marshall	Missouri.
First National Bank of Audrain County	Mexico	Missouri.
Peoples Bank of the Ozarks	Nixa	Missouri.
First Midwest Bank of Piedmont	Piedmont	Missouri.
Peoples Savings Bank of Rhineland	Rhineland	Missouri.

Hardin Federal Savings Bank	Richmond	Missouri.
The State Bank	Richmond	Missouri.
Farmers State Bank of Schell City	Schell City	Missouri.
Citizens National Bank of Springfield	Springfield	Missouri.
Bank of Thayer	Thayer	Missouri.
Quarry City Savings and Loan Association	Warrensburg	Missouri.
Citizens State Bank of Pembina County	Cavalier	North Dakota.
Wells Fargo Bank of North Dakota, N.A.	Fargo	North Dakota.
First State Bank Langdon	Langdon	North Dakota.
BankFirst, N.A.	Sioux Falls	South Dakota.
Home Federal Savings Bank	Sioux Falls	South Dakota.
F&M Bank	Watertown	South Dakota.

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9

First Financial Bank, fsb	El Dorado	Arkansas.
Fordyce Bank and Trust Company	Fordyce	Arkansas.
Forrest City Bank, NA	Forrest City	Arkansas.
Bank of Lockesburg	Lockesburg	Arkansas.
Southeast Arkansas Bank	Parkdale	Arkansas.
Pine Bluff National Bank	Pine Bluff	Arkansas.
Arvest Bank	Rogers	Arkansas.
First Arvest Bank	Siloam Springs	Arkansas.
Bank of Coushatta	Coushatta	Louisiana.
St. Tammany Homestead S&LA	Covington	Louisiana.
Teche Federal Savings Bank	Franklin	Louisiana.
Florida Parishes Bank	Hammond	Louisiana.
LBA Savings Bank	Lafayette	Louisiana.
Guaranty Savings and Homestead Association	Metairie	Louisiana.
Mutual Savings and Loan Association	Metairie	Louisiana.
Horizons Bank	Monroe	Louisiana.
Eureka Homestead Society	New Orleans	Louisiana.
Hibernia Homestead and Savings Association	New Orleans	Louisiana.
Peoples Bank & Trust Company of Pointe Coupee	New Roads	Louisiana.
Ponchatoula Homestead Association, F.A.	Ponchatoula	Louisiana.
Bank of West Baton Rouge	Port Allen	Louisiana.
Ruston Building and Loan Association	Ruston	Louisiana.
First National Bank of Springdale	Springdale	Louisiana.
Bank of St. Francisville	St. Francisville	Louisiana.
American Bank	Welsh	Louisiana.
The Bank of Commerce	White Castle	Louisiana.
Amory Federal Savings & Loan Association	Amory	Mississippi.
Delta Bank and Trust	Drew	Mississippi.
Britton & Koontz First National Bank	Natchez	Mississippi.
Mechanics Bank	Water Valley	Mississippi.
International Bank	Raton	New Mexico.
Tucumcari Federal Savings & Loan Association	Tucumcari	New Mexico.
First National Bank of Athens	Athens	Texas.
First National Bank of Bridgeport	Bridgeport	Texas.
Citizens State Bank	Cross Plains	Texas.
Cuero State Bank, s.s.b.	Cuero	Texas.
Beal Bank, SSB	Dallas	Texas.
Mercantile Bank & Trust, FSB	Dallas	Texas.
Provident Bank	Dallas	Texas.
First National Bank of Texas	Decatur	Texas.
First United Bank	Dimmitt	Texas.
Union State Bank	Florence	Texas.
Omni American Federal Credit Union	Fort Worth	Texas.
Summit Community Bank N.A.	Fort Worth	Texas.
Security Bank, N.A.—Garland	Garland	Texas.
Hebbronville State Bank	Hebbronville	Texas.
Prime Bank	Houston	Texas.
Central Bank of Houston	Houston	Texas.
MetroBank, N.A.	Houston	Texas.
Texas Guaranty Bank, N.A.	Houston	Texas.
Texas State Bank	Joaquin	Texas.
First Nichols National Bank	Kenedy	Texas.
First National Bank of Lake Jackson	Lake Jackson	Texas.
Commerce Bank	Laredo	Texas.
First Federal Savings and Loan Association	Littlefield	Texas.
First National Bank of Livingston	Livingston	Texas.
Plains National Bank of West Texas	Lubbock	Texas.
Mason National Bank	Mason	Texas.
Inter National Bank	McAllen	Texas.
Mineola Community Bank, SSB	Mineola	Texas.
City National Bank	Mineral Wells	Texas.

Commercial Bank of Texas, N.A.	Nacogdoches	Texas.
Western National Bank	Odessa	Texas.
Orange Savings Bank, ssb	Orange	Texas.
Gulf Coast Educators Federal Credit Union	Pasadena	Texas.
Lone Star National Bank	Pharr	Texas.
Fort Bend Federal Savings & Loan Association	Rosenberg	Texas.
Community Bank of Central Texas	Smithville	Texas.
Town and Country Bank	Stephenville	Texas.
Heritage Savings Bank, SSB	Terrell	Texas.
First National Bank	Trinity	Texas.
First National Bank of Bosque County	Valley Mills	Texas.
FirstCapital Bank, ssb	Victoria	Texas.
Fannin Bank	Windom	Texas.

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10

Commerce Bank	Aurora	Colorado.
Premier Members Federal Credit Union	Boulder	Colorado.
Del Norte Federal Savings & Loan Association	Del Norte	Colorado.
Premier Bank	Denver	Colorado.
TCF National Bank Colorado	Englewood	Colorado.
FirstBank of Evergreen	Evergreen	Colorado.
Bank of Grand Junction	Grand Junction	Colorado.
FirstBank of Greeley	Greeley	Colorado.
First National Bank of Julesberg	Julesberg	Colorado.
The State Bank—La Junta	La Junta	Colorado.
First National Bank of Lake City and Creede	Lake City	Colorado.
FirstBank of Parker	Parker	Colorado.
Rocky Ford National Bank	Rocky Ford	Colorado.
First National Bank of Stratton	Stratton	Colorado.
Bank of Commerce	Chanute	Kansas.
Home Savings Bank	Chanute	Kansas.
Legacy Bank	Colwich	Kansas.
State Bank of Conway Springs	Conway Springs	Kansas.
Landmark Federal Savings Bank	Dodge City	Kansas.
Citizens State Bank and Trust Company	Ellsworth	Kansas.
State Bank of Fredonia	Fredonia	Kansas.
Gardner National Bank	Gardner	Kansas.
Farmers State Bank	Oakley	Kansas.
First Kansas Federal Savings Bank	Osawatomie	Kansas.
First Bank	Sterling	Kansas.
Chisholm Trail State Bank	Wichita	Kansas.
The State Bank	Winfield	Kansas.
Bank of Bennington	Bennington	Nebraska.
Washington County Bank	Blair	Nebraska.
Custer Federal Savings and Loan Association	Broken Bow	Nebraska.
Citizens State Bank	Carleton	Nebraska.
CerescoBank	Ceresco	Nebraska.
First Bank and Trust	Cozad	Nebraska.
First State Bank	Enders	Nebraska.
First National Bank in Exeter	Exeter	Nebraska.
Farnam Bank	Farnam	Nebraska.
American National Bank of Fremont	Fremont	Nebraska.
First State Bank	Fremont	Nebraska.
Henderson State Bank	Henderson	Nebraska.
Kearney State Bank and Trust Company	Kearney	Nebraska.
Firstate Bank	Kimball	Nebraska.
Farmers and Merchants Bank	Milligan	Nebraska.
Centennial Bank	Omaha	Nebraska.
Citizens Bank of Ada	Ada	Oklahoma.
First National Bank	Broken Arrow	Oklahoma.
Bank of Chelsea	Chelsea	Oklahoma
1st Bank Oklahoma	Claremore	Oklahoma.
American Bank and Trust	Edmond	Oklahoma.
InterBank, N.A.	Elk City	Oklahoma.
Liberty Federal Savings Bank	Enid	Oklahoma.
Fairview Savings and Loan Association	Fairview	Oklahoma.
First Southwest Bank	Frederick	Oklahoma.
Stockmans Bank	Gould	Oklahoma.
City National Bank and Trust Company	Guymon	Oklahoma.
The Bank of Kremlin	Kremlin	Oklahoma.
Bank of Elgin	Lawton	Oklahoma.
Morris State Bank	Morris	Oklahoma.
Arvest Bank	Norman	Oklahoma.
Osage Federal Savings & Loan Association	Pawhuska	Oklahoma.
NBC Bank	Pawhuska	Oklahoma.

First Priority Bank	Pryor	Oklahoma.
Peoples Bank and Trust	Ryan	Oklahoma.
Spencer State Bank	Spencer	Oklahoma.
Bank of Commerce	Stillwell	Oklahoma.
Sooner State Bank	Tuttle	Oklahoma.
First State Bank	Valliant	Oklahoma.
Citizens' Bank	Velma	Oklahoma.
First State Bank	Watonga	Oklahoma.
Peoples Bank	Westville	Oklahoma.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO—DISTRICT 11

Placer Sierra Bank	Auburn	California.
Western Security Bank, N.A.	Burbank	California.
Mt. Diablo National Bank	Danville	California.
Hawthorne Savings, F.S.B.	El Segundo	California.
Murphy Bank	Fresno	California.
Eldorado Bank	Irvine	California.
Downey Savings & Loan Association	Newport Beach	California.
Universal Bank	Orange	California.
Rancho Santa Fe National Bank	Rancho Santa Fe	California.
Feather River State Bank	Redding	California.
Provident Savings Bank, FSB	Riverside	California.
First Bank of California	Roseville	California.
First Federal Credit Union	Sacramento	California.
River City Bank	Sacramento	California.
Pan American Bank, FSB	San Mateo	California.
Tamalpais Bank	San Rafael	California.
Los Padres Savings Bank, FSB	Solvang	California.
Sonoma Valley Bank	Sonoma	California.
First Security Bank of California, NA	West Covina	California.
Quaker City Bank	Whittier	California.

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12

Citizens Security Bank (Guam), Inc.	Agana	Guam.
FirstBank Northwest	Lewiston	Idaho.
First Security Bank Missoula	Kalispell	Montana.
First National Bank of Lewiston	Lewiston	Montana.
Empire Bank	Livingston	Montana.
Ronan State Bank	Ronan	Montana.
Linn-Benton Bank	Albany	Oregon.
Pioneer Bank, F.S.B.	Baker City	Oregon.
Evergreen FS&LA	Grants Pass	Oregon.
Bank of Eastern Oregon	Heppner	Oregon.
Banner Bank of Oregon	Hermiston	Oregon.
Klamath First Federal Savings and Loan	Klamath Falls	Oregon.
Orchard Bank	Ontario	Oregon.
American Marine Bank	Bainbridge Island	Washington.
The Bank of Edmonds	Lynnwood	Washington.
Whidbey Island Bank	Oak Harbor	Washington.
Olympia Federal Savings & Loan Association	Olympia	Washington.
Heritage Savings Bank	Olympia	Washington.
First Federal Savings and Loan Association	Port Angeles	Washington.
Riverview Community Bank	Riverview	Washington.
Asia-Europe-Americas Bank	Seattle	Washington.
Key Bank N.A.	Seattle	Washington.
Washington Mutual Bank	Seattle	Washington.
Washington Mutual Bank fsb	Seattle	Washington.
Farmers and Merchants Bank of Rockford	Spokane	Washington.
Yakima Federal Savings and Loan Association	Yakima	Washington.
American National Bank of Rock Springs	Rock Springs	Wyoming.
Rock Springs National Bank	Rock Springs	Wyoming.
Tri-County Federal Savings Bank	Torrington	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 29, 2001, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 fourth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 fourth quarter review cycle must be delivered to the Finance Board on or before the March 2, 2001 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 01–382 Filed 1–12–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Admiral Family Banks, Inc., Alsip, Illinois; to acquire 100 percent of the voting shares of Federated Bancorp, Inc., Loda, Illinois, and thereby indirectly acquire voting shares of Federated Bank, Onarga, Illinois.

Board of Governors of the Federal Reserve System, January 9, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–1124 Filed 1–12–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Worth Bancorp, Spartanburg, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worth Bank (in organization), Spartanburg, Indiana, which will merge with Greensfork Township State Bank, Spartanburg, Indiana.

Board of Governors of the Federal Reserve System, January 10, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–1227 Filed 01–12–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—11/27/2000			
20010384	Bunzl plc	Lawrence D. Starr	Koch Supplies Inc.
20010443	Bunzl plc	Edward S. Reiner	Schrier Bros., Inc.
20010445	Knauf International GmbH	USG Corporation	USG Corporation.
20010490	AmeriPath, Inc	Pathology Consultants of America, Inc	Pathology Consultants of America, Inc.
20010505	Ali M. & Ather Jaferi	Bay View Capital Corp	Bay View Franchise Mortgage Acceptance Company.
20010507	NICE Systems, Ltd	Steven D. Kaiser	Stevens Communications, Inc.

Trans No.	Acquiring	Acquired	Entities
20010547	Solectron Corporation	Sony Corporation	Sony Industries Taiwan Co., Ltd Sony Nakaniida Corporation.
20010593	Chorum Technologies, Inc	Polytronix, Inc	Polytronix, Inc.
Transactions Granted Early Termination—11/28/2000			
20010423	Oak Investment Partners IX, Limited Partnership.	United Messaging, Inc	United Messaging, Inc.
20010468	Swander Pace Capital Fund, L.P	Bruckmann, Rosser, Sherrill & Co., L.P	Burns & Ricker, Inc.
20010477	Perot Systems Corporation	Health Systems Design Corporation	Health Systems Design Corporation.
20010480	General Electric Company	Gannett Co., Inc	Space Holding Corp.
20010481	Greylock IX Limited Partnership	Gannett Co., Inc	Space Holding Corp.
20010482	Venrock Associates II	Gannett Co., Inc	Space Holding Corp.
20010484	Third Avenue Trust	Tejon Ranch Company	Tejon Ranch Company.
20010492	Carl Marks Strategic Investments, L.P	Tejon Ranch Company	Tejon Ranch Company.
20010524	Nationwide Mutual Insurance Company.	White Mountains Insurance Group, Ltd	Waterford Insurance Company.
20010536	Advent International Corporation	Datek Online Holdings, Corp	Datek Online Holdings, Corp.
20010537	Silver Lake Partners, L.P	Datek Online Holdings, Corp	Datek Online Holdings, Corp.
20010538	TA IX, L.P.	Datek Online Holdings, Corp.	Datek Online Holdings, Corp.
20010553	Naomi C. Dempsey	International Paper Company	International Paper Company.
20010575	Adelphia Communications Corporation	Everett J. Mundy	Tele-Media Company of Green River. Tele-Media Company of Southern Virginia. Tele-Media Kentucky Trading Company, G.P.
20010576	Adelphia Communications Corporation	Robert E. Tudek	Tele-Media Company of Green River. Tele-Media Company of Southern Virginia. Tele-Media Kentucky Trading Company, G.P.
20010638	TA/Atlantic and Pacific IV, L.P	Datek Online Holdings Corp	Datek Online Holdings Corp.
Transactions Granted Early Termination—11/29/2000			
20010444	Patton R. Corrigan	Equilease Holding Corp	Mansfield Plumbing Products, Inc.
20010494	Global Sports, Inc	Fogdog, Inc	Fogdog, Inc.
20010500	Wind Point Partners IV, L.P	Weyerhaeuser Company	Weyerhaeuser Company.
20010504	David Frederick Griffin Trust No. 1	A.H. Belo Corporation	KOTV, Inc.
20010509	The 1818 Fund III, L.P	Mortimer B. Fuller, III	Genesee & Wyoming Inc.
20010510	El.FI. Electrofinanzaria S.p.A	Moulinex S.A	Moulinex S.A.
20010512	Duke Energy Corporation	El Paso Energy Corporation	PG&E National Energy Goup, Inc.
20010514	SEACOR SMIT Inc	SCF Corporation	SCF Corporation.
20010515	Fabrikant International Corporation	SEACOR SMIT Inc	SEACOR SMIT Inc.
20010516	Textron, Inc	George Sbordone, Jr	Tempo Research Corporation.
20010527	Radio One, Inc	Sunburst Dallas, L.P	Sunburst Dallas, L.P.
20010529	Safeguard Scientifics, Inc	Steven D. Siegfried	Palarco International, Inc Palarco, Inc.
20010531	AMT Group, Inc	HCA—The Healthcare Company	Columbia Hospital Corporation of Houston.
20010535	Global Private Equity III Limited Partnership.	Datek Online Holdings, Corp	Datek Online Holdings, Corp.
20010539	FleetBoston Financial Corporation	Jeffrey Chizmas	Cider Mill Farms Company, Inc Snuffy's Pet Products, Inc.
20010540	FleetBoston Financial Corporation	Whitehall Associates, L.P	APP Holding Corporation.
20010543	O. Bruton Smith	Robert R. & Margaret E. Baillargeon	Richardson Ford, Inc.
20010555	CDC Finance	CDC North America Inc	CDC North America Inc.
Transactions Granted Early Termination—11/30/2000			
20010489	InterWest Partners V, L.P	Corixa Corporation	Corixa Corporation.
20010499	Paul G. Allen	One-on-One Sports, Inc	One-on-One Sports, Inc.
20010508	Fresenius AG	Everest Healthcare Services Corporation.	Everest Healthcare Services Corporation.
20010546	Dover Corporation	RailAmerica, Inc	Kalyn/Siebert I Incorporated.
20010548	Sheldahl, Inc	Morgenthaler Venture Partners V, L.P	International Flex Holdings, Inc.
20010550	Munich Re	Loews Corporation	Loews Corporation.
20010556	FedEx Corporation	American Freightways Corporation	American Freightways Corporation
20010557	F. Sheridan Garrisson	FedEx Corporation	FedEx Corporation.
20010588	Software AG	Saga Systems, Inc	Saga Systems, Inc.
20010594	Cox Enterprises, Inc	Radio One, Inc.	Radio One Licenses, Inc.
20010598	Cisco Systems, Inc	Integrated Micromachines Incorporated	Integrated Micromachines Incorporated.
20010600	Kulicke & Soffa Industries, Inc	Siegal-Robert, Inc	Probe Technology, Corporation.

Trans No.	Acquiring	Acquired	Entities
20010601	Estate of Charles A. Sammons	William L. Baker	Coastline Equipment Co., Inc.
20010603	Fuji Seal, Inc	Owens-Illinois, Inc	Owens-Illinois Labels Inc.
20010604	Exelon Corporation	Blair Park Services, Inc.	Blair Park Services, Inc.
20010605	Best Buy Co., Inc	Leonard M. Tweten	Magnolia Hi-Fi, Inc.
20010607	Andrew J. McKelvey	Satinder Garcha	People.com Consultants, Inc.
20010618	Intuit Inc	FrontLine Capital Group	Employee Matters, Inc.
20010639	Bain Capital Fund VII, L.P	Datek Online Holdings, Corp	Datek Online Holdings, Corp.
20010641	Apollo Investment Fund IV, L.P	Wareco Service, Inc	Wareco Service, Inc.
20010644	Mosaic Group Inc	Paradigm Direct, Inc	Paradigm Direct, Inc.
20010645	Computershare Limited	Merrill Lynch & Co., Inc	Merrill Lynch & Co., Inc.
20010647	Investor AB	Molecular Staging Inc	Molecular Staging Inc.
20010649	Broadcom Corporation	SiByte, Inc	SiByte, Inc.
20010651	Andrew J. McKelvey	SPEC Group Holdings, Inc	SPEC Group Holdings, Inc.
20010653	Smith International, Inc	Emerson Electric Co	Emerson Electric Co.
20010655	Pitney Bowes, Inc	Royal Dutch Petroleum Company	Services Integration Group, L.P. SIG–GP, LLC
Transactions Granted Early Termination—12/01/2000			
20010485	Hollinger Inc	The James S. Copley Marital Trust	Fox Valley Press Inc.
Transactions Granted Early Termination—12/04/2000			
20010622	MBNA Corporation.	Citizens Banking Corporation	Citizens Bank, F&M Banking-Iowa.
20010673	The Black & Decker Corporation	Emglo Products, L.P	Emglo Products, L.P.
Transactions Granted Early Termination—12/05/2000			
20010532	Ernst & Young U.S. L.P	Teach.com, Inc	Teach.com, Inc.
20010551	International FiberCom, Inc	John W. Perry, Jr	Faulk & Foster Real Estate, Inc.
20010552	Cephalon, Inc	Abbott Laboratories	Abbott Laboratories
20010554	Aether Systems, Inc	RTS Wireless, Inc	RTS Wireless, Inc.
20010606	James Chao	New Focus, Inc	New Focus, Inc.
20010608	KKR 1996 Fund L.P	About.com, Inc	About.com, Inc.
20010612	Cisco Systems Inc	iPass Inc	iPass Inc.
20010621	Exelon Corporation	Conectiv, Inc	Atlantic City Electric Company. Delmarva Power & Light Company.
20010623	Ocwen Financial Corporation	Empire Funding Corp	Empire Funding Corp.
20010624	Juniper Networks, Inc	Calient Networks, Inc	Calient Networks, Inc.
20010625	Rocco B. Commisso	AT&T Corp	TCI TKR of the Gulf Plains, Inc.
20010630	Victorinox A.G	Swiss Army Brands, Inc	Swiss Army Brands, Inc.
20010632	Kleiner Perkins Caufield & Byers IX–A, L.P.	Naxon Corporation	Naxon Corporation
20010633	Sky Financial Investment, LLC	Tricon Global Restaurants, Inc	Tricon Global Restaurants, Inc.
20010636	The Zukerman Family Trust	Eli Epstein	Calcined Coke Corporation.
20010637	The Bank of New York, Inc.	Citigroup, Inc.	Schroder & Co., Inc.
20010640	The Chase Manhattan Corporation	Citigroup, Inc.	Lewco Securities Corp.
20010648	Avocent Corporation	Equinox Systems Inc	Equinox Systems Inc.
20010650	Aether Systems, Inc	Michael J. Saylor	Strategy.com, Incorporated.
20010662	David Smilow	Mutual of American Life Insurance Company.	Lifxo Holding Company, Inc.
20010664	Henry L. Hillman	Patrick P. Lee	Hughes Hi-Tech, Inc. SAS Fluid Power, Inc.
20010670	Ripplewood Partners, L.P	Adaptive Broadband Corporation	Adaptive Broadband Corporation
20010674	AAR Corp	AAR Corp	Turbine Engine Asset Management, LLC.
20010675	General Electric Company	AAR Corp	Turbine Engine Asset Management, LLC.
20010678	General Electric Company	General Electric Company	Aviation Inventory Management Co.; LLC (AIMCO)
20010679	White Mountain Insurance Group, Inc	CGNU plc	CGU Corporation.
20010680	Salem Communications Corporation	Sumner M. Redstone	Infinity Broadcasting Corporation.
20010682	Financial Holding Corporation	ORIX Corporation	Morgan Premium Finance Corp. Morgan Premium Finance of California, Inc.
20010683	General Motors Corporation	Suzuki Motor Corporation	Suzuki Motor Corporation.
20010685	Internet Capital Group, Inc.	Anderson Consulting LLP	ePValue.com, Inc.
20010688	Windward Capital Partners II, L.P	First National of Nebraska, Inc	RPSI, Inc. d/b/a Retriever Payment Systems.
20010692	Mican Limited	CGI Holding Comany	CGI Holding Company.
20010693	Startec Global Communications Corp	Iceberg Transport, S.A	Capsule Communications, Inc.
20010702	Dell Computer Corp	StorageApps Inc	StorageApps Inc.
20010707	Atlantic Equity Partners III, L.P	Thermo Electron Corporation	Peek Ltd.
20010712	David and Sherry Gold	99¢ Only Stores	Odd's-N-End's, Inc Universal International, Inc.

Trans No.	Acquiring	Acquired	Entities
20010713	Footstar Inc	J. Baker, Inc	JBI, Inc Morse Shoe, Inc.
20010714	Alliant Energy Corporation	National Grid Group, plc	EUA Congenex Corporation.
20010720	E.I. du Pont de Nemours and Company.	Haci Omer Sabanci Holding A.S	Kordsa Sabanci DuPont Industrial Yarn & Tire Cord Fabric Man.
20010723	Close Brothers Group plc	Vereniging Aegon	Transamerica Insurance Finance Company.
20010725	Ashish Bhutani	Dresdner BanK AG	Dresdner Bank AG.
20010726	Jeffrey A. Rosen	Dresdner Bank AG	Dresdner Bank AG.
20010727	Michael J. Biondi	Dresdner Bank AG	Dresdner Bank AG.
20010728	Robert Pruzan	Dresdner Bank AG	Dresdner Bank AG.
20010730	Molson Inc	Philip Morris Companies Inc	Molson USA, LLC.
20010732	Siebel Systems, Inc	Sales.com, Inc	Sales.com, Inc.
20010735	Brentwood Associates Private Equity III, L.P.	William Fielding	Dramatic Holdings, Inc.
20010736	Brentwood Associates Private Equity III, L.P.	John Fielding	Dramatic Holdings, Inc.
20010741	Grotech Partners V, L.P	USinternetworking, Inc	USinternetworking, Inc.
20010748	Faithful Central Bible Church	Philip F. Anschutz	L.A. Forum Holdings, LLC.
20010749	Bayerische Hypo -und Vereinsbank AG.	BA Holding AG	Bank Austria Commerical Paper LLC, Bank Austria AG.
20010763	Inktomi Corporation	Adero, Inc	Adero, Inc.
20010774	Capital Z Financial Services Fund II, L.P.	Lending Tree, Inc	Lending Tree, Inc.
Transactions Granted Early Termination—12/06/2000			
20010051	Robert N. Smith	Stephens Group, Inc	Stephens Group, Inc.
20010448	VoiceStream Wireless Corporation	Cook Inlet Region, Inc	Cook Inlet GSM, Inc Cook Inlet Telecommunications, Inc.
20010454	Robert E. Shaw	Berkshire Hathaway, Inc	Berkshire Hathaway, Inc.
20010475	Martin Marietta Materials, Inc	MAC Acquisitions, Inc	MAC Acquisitions, Inc.
20010523	Heartland Industrial Partners, L.P	Global Metal Technologies, Inc	Global Metal Technologies, Inc.
20010562	VerticalNet, Inc	SierraCities.com. Inc	SierraCities.com Inc.
20010564	New Focus, Inc	James Chao	JCA Technology, Inc.
20010565	Apollo Investment Fund IV, L.P	Rail Van, Inc	Rail Van, Inc.
20010566	Richard Haworth	US Office Products Company	Pear Commercial Interiors, Inc Price Modern, Inc.
20010570	SAIA-Burgess Electronics Holding AG	TRW Inc	TRW Sensors and Components Inc.
20010571	Donald R. Draughon, Jr.	East Coast Oil Corporation	East Coast Oil Corporation.
20010652	Meriter Health Services, Inc	Physicians Plus Insurance Corporation	Physicians Plus Insurance Corporation.
20010709	J.W. Childs Equity Partners II, L.P	Leonard N. Stern	Hartz Mountain Corporation.
20010845	PJM Interconnection, L.L.C	PPL Corporation	PPL Corporation.
20010846	PJM Interconnection, L.L.C	Public Service Enterprise Group Incorporated.	Public Service Enterprise Group Incorporated.
20010847	PJM Interconnection, L.L.C	Exelon Corporation	Exelon Corporation.
20010853	Sociedad General de Aguas de Barcelona, S.A.	Daniel J. Keating, III	Keating Technologies, Inc.
20010858	Allianz AG	Arthur E. Nicholas	Nicholas-Applegate LLC.
20010864	The Virginia Insurance Reciprocal	Alabama Hospital Association Trust	Coastal Insurance Enterprises, Inc.
Transactions Granted Early Termination—12/07/2000			
20010488	Minnesota Mining & Manufacturing Company.	MicroTouch Systems, Inc	MicroTouch Systems, Inc.
20010573	Empirix Inc	Teradyne, Inc	SFTG LLC.
20010584	Anderson-Tully Company	Naomi C. Dempsey	Soterra LLC.
20010597	Alan B. Miller	Behavioral Healthcare Corporation	BHC Clinicas Del Este Hospital, Inc. BHC Health Services of Puerto Rico, Inc BHC San Juan Capestrano Hospital, Inc CPC Clinicas Del Este, Inc., Integrated HealthCare Sys Corp.
20010614	Manuel Alba	Marvell Technology Group Ltd	Marvell Technology Group Ltd.
20010615	Avigdor Willenz	Marvell Technology Group Ltd	Marvell Technology Group Ltd.
20010656	David E. Barensfeld	Allegheny Technologies Incorporated	TDY Industries, Inc.
20010668	Patterson Energy, Inc	Lawayne Jones	Jones Drilling Corp., Henderson Welding, Inc. LEJ Truck and Crane, Inc.
20010669	Zemex Corporation	Hecla Mining Company	Hecla de Brasil Empreendimentos de Participacoes Ltda. Kentucky-Tennessee Clay Company.

Trans No.	Acquiring	Acquired	Entities
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20010716	Centre Capital Investors III, L.P.	Terence J. Goodling	Grass Valley Group Inc.
20010718	Unaxis Holding AG	Applied Films Corporation	Applied Films Corporation.
20010719	Panhandle-Plains Higher Education Authority, Inc.	Abilene Higher Education Foundation	Abilene Higher Education Resources Corporation.
20010762	Reinhard Mohn	Frank V. Cappo	Coral Graphics Services of Virginia, Inc Coral Graphics Services, Inc.
	Transactions Granted Early Termination—12/08/2000		
20010542	Credit Suisse Group	Enron Corp	Basic Energy Services, Inc.
20010545	Compagnie de Saint-Gobain	Magic Manufacturing, Inc	Magic Manufacturing, Inc.
20010567	Internet Capital Group, Inc	Cephren, Inc	Cephren, Inc.
20010568	General Electric Company	Cephren, Inc	Cephren, Inc.
20010572	Royal Bank of Canada	Dain Rauscher Corporation	Dain Rauscher Corporation.
20010574	Teradyne, Inc	Empirix Inc	Empirix Inc.
20010589	Allied Capital Corporation	BLC Financial Services, Inc	BLC Financial Services, Inc.
20010592	Germain Lamonde	Burleigh Instruments, Inc	Burleigh Instruments, Inc.
20010610	Whitney V, L.P	Michael J. Hartnett	Roller Bearing Holding Company, Inc.
20010619	Electronic Data Systems Corporation	Electronic Data Systems Corporation	TransAlliance L.P.
20010620	Berkshire Hathaway Inc	Benjamin Moore & Co	Benjamin Moore & Co.
20010646	AT&T Corporation	Sumner M. Redstone	Viacom Inc. Westinghouse CBS Holding Company. Westinghouse Electric G.m.b.H.
20010663	Washington Mutal Inc	The PNC Financial Services Group, Inc.	PNC Mortgate Corp. of America. PNC Mortgage Securities Corp PNC Reinsurance Corp.
20010681	Menasha Corporation	Accurate Box, Carton and Container Corp.	Accurate Box, Carton and Container Corp.
20010689	Crescendo III, L.P	VeloCom Inc	VeloCom Inc.
20010690	GTCR Fund VII, L.P	First Tennessee National Corporation	First Tennessee Bank National Association.
20010697	Bank of America Corporation	American Fidelity & Liberty, Inc	American Fidelity & Liberty, Inc.
20010700	George E. Robb Jr	LaBranche & Co. Inc	LaBranche & Co. Inc.
20010701	LaBranche & Co. Inc	George E. Robb Jr	Robb Peck McCooey Financial Services, Inc.
20010708	Monrovia Nursery Company	Horticultural Farms, Inc	Horticultural Farms, Inc.
20010711	Harrowston Inc	AvinMeritor, Inc	Meritor Heavy Vehicle Systems, LLC.
20010715	Honeywell Electronic Manufacturing Services, Inc.	Mitsubishi Chemical Corporation	Mitsubishi Chemical America, Inc.
20010717	Cendant Corporation	Avis Group Holdings, Inc	Avis Group Holdings, Inc.
20010734	Brambles Industries Limited	Instashred Security Services, Inc	Instashred Security Services, LLC.
20010739	Comverse Technology	PacketVideo Corporation	PacketVideo Corporation.
20010743	Phillips Petroleum Company	Phillips Petroleum Company	Sweeny Olefins Limited Partnership.
20010744	William Davidson	TruServ Corporation	TruServ Corporation.
20010745	Paxton Media Group, Inc	A.H. Belo Corporation	Henderson Gleaner, Inc. Owensboro Messenger-Inquirer, Inc.
20010746	NDS Holdings, L.P	Sarno Heirs Trust	SML, LLC.
20010747	Gerald W. Schwartz	La Francaise Bakery, Inc	La Francaise Bakery, Inc.
20010752	Praxair Inc	Viscount III, LLC	HealthCare Partners, LLC, HCP, Inc HealthCare Partners-Indiana, Inc., HCP Pediatric Care Ser.
20010753	The Bear Stearns Companies Inc	Helios Management LLC	Helios Group Illinois LLC. Helios Holding LLC, Helios Futures and Options LLC.
20010766	Phillip R. Bennett	Sukhmeet (Micky) Dhillon	Main Street Trading Company/Newhall Discount Futures, Inc.
20010777	Tom T. Gores	Lanier Worldwide, Inc	Lanier Worldwide, Inc.
20010781	Russel Metals Inc	Pitt-Des Moines, Inc	Pitt-Des Moines, Inc.
20010795	James Fine Chemicals, Inc. d/b/a JFC Technologies.	Schweizerhall Holding AG	Schweizerhall Development Corporation. Schweizerhall Manufacturing Corporation.
20010797	Arnett Physician Group, P.C.	PhyCor, Inc	PhyCor-Lafayette, LLC, Arnett Health Plans, Inc.
20010798	Michael Luke	SIG Schweizerische Industrie-Gesellschaft Holding AG.	SIG Arms Inc.
20010799	Thomas Ortmeier	SIG Schweizerische Industrie-Gesellschaft Holding AG.	SIG Arms Inc.
20010803	Mark Cuban	FXM, Inc	FXM, Inc.
20010804	Keller Group, Inc	Nucor Corporation	Nucor Corporation.

Trans No.	Acquiring	Acquired	Entities
20010809	Stephen E. Myers	The Walt Disney Company	Vista-United Telecommunications Partnership.
20010812	American National Insurance Company	Farm Family Holdings, Inc	Farm Family Holdings, Inc.
20010814	FreeBorders.com, Inc	Internet Capital Group, Inc	Animated Images, Inc.
20010815	Internet Capital Group, Inc	FreeBorders.com, Inc	FreeBorders.com, Inc.
20010816	PNC Financial Services Group, Inc	Dana Corporation	Dana Corporation.
20010819	Amkor Technology, Inc	Toshiba Corporation	Iwate Toshiba Electronics Co., Ltd.
20010825	Unitrin, Inc	Curtiss-Wright Corporation	Curtiss-Wright Corporation.
20010828	Zurich Financial Services	The First Australia Fund, Inc	The First Australia Fund, Inc.
20010844	PJM Interconnection, L.L.C	GPU, Inc	GPU, Inc.
20010859	General Motors Corporation	Bank of America Corporation	Banc of America Commercial Corporation.
20010861	Cook Inlet Region, Inc	John S. Boyd	BCN Communications, L.L.C.
20010886	Brown & Brown, Inc	John R. Riedman	Riedman Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–1168 Filed 1–12–01; 8:45 am]

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/11/2000			
20010684	Heerema Holding Company, Inc	INTEC Engineering Partnership, Ltd.	INTEC Engineering Partnership, Ltd.
20010892	Cardinal Health, Inc	Martina Nowak	International Processing Corporation.
20010893	Cardinal Health, Inc	Kenneth W. Olsen	International Processing Corporation.
20010898	The Virginia Insurance Reciprocal	Healthcare Workers' Compensation Self-Insurance Fund.	Healthcare Workers' Compensation Self-Insurance Fund.
20010912	ABN AMRO Holding N.V	Trade.com Global Markets, Inc	Trade.com Global Markets, Inc
20010915	Kerry J. Dukes	Trade.com Global Markets, Inc	Trade.com Global Markets, Inc
20010922	Kamal Mustafa	Trade.com Global Markets, Inc	Trade.com Global Markets, Inc
Transactions Granted Early Termination—12/12/2000			
20010909	Matthew D. Castagna	Trade.com Global Markets, Inc	Trade.com Global Markets, Inc
20010925	Bernard Arnault	Datek Online Holdings, Corp	The Island ECN, Inc
Transactions Granted Early Termination—12/13/2000			
20010818	General Electric Company	James A. Glaser	ACT Communications, Inc
Transactions Granted Early Termination—12/14/2000			
20010563	Eastman Kodak Company	Lumisys Incorporated	Lumisys Incorporated.
20010613	Telecom Partners III, L.P	VeloCom Inc	VeloCom Inc
20010616	Centennial Fund VI, L.P	VeleCom Inc	VeleCom Inc
20010703	Wrenchead.com, Inc	Raymond J. and Lewena Noorda	Profit Pro, Inc
20010704	Raymond J. Noorda and Lewena Noorda.	Wrenchead.com, Inc	Wrenchead.com, Inc
20010722	Trintech Group PLC	GlobeSet, Inc	GlobeSet, Inc J. Driscoll & Associates, Inc
20010731	Lone Star Opportunity Fund, L.P	Greenbriar Corporation	Greenbriar Corporation.
20010750	Iowa Farm Bureau Federation	The Kansas Farm Bureau	The Kansas Farm Bureau.
20010773	NSB Retail Systems PLC	3068358 Canada Inc	STS Systems, Inc
20010775	TeleCorp PCS, Inc	ALLTEL Corporation	ALLTEL Communications, Inc

Trans No.	Acquiring	Acquired	Entities
20010776	The Kansas Farm Bureau	Iowa Farm Bureau Federation	FBL Financial Group, Inc
20010778	The McGraw-Hill Companies, Inc	Mayfield Publishing Company	Mayfield Publishing Company.
20010782	First Data Corporation	Wells Fargo & Company	Wells Fargo Merchant Services, LLC.
20010808	Scott Kurmit	PRIMEDIA Inc	PRIMEDIA Inc
20010824	Weyerhaeuser Company	Williamette Industries, Inc	Willamette Industries, Inc
20010897	MDMI Holdings, Inc	American Technical Molding, Inc	American Technical Molding, Inc
Transactions Granted Early Termination—12/15/2000			
20003935	The Valspar Corporation	Lilly Industries, Inc	Lilly Industries, Inc
20004870	Transocean Sedco Forex Inc	R&B Falcon Corporation	R&B Flcon Corporation.
20010334	Kinder Morgan Energy Partners, L.P	NOVA Chemicals Corporation	NOVA Chemicals Corporation.
20010483	French Fragrances, Inc	Unilever N.V	Conopco, Inc
20010611	Summer M. Redstone	Robert L. Johnson	BET Holdings II, Inc
20010659	Pierre Fabre	Alain Merieux	bioMerieux Alliance, SA.
20010817	Wind Point Partners IV, L.P	SMR ECR Holding, Inc	Alexandria Sports, Inc, Burke Sports, Inc Eden Sports, Inc, Leesburg Sports, Inc, Trumbull PT Corp SMR Banyan Tree, Inc, Professional rehab Associates, Inc
20010826	Global TeleSystem Inc	MCT of Russia, L.P	MCT Corp
20010827	Varco Innternational, Inc	The Beacon Group Energy Investment Fund, L.P.	Quality Tubing, Inc
20010831	Cisco Systems, Inc	Active Voice Corporation	Active Voice Corporation.
20010837	Dycom Industries, Inc	Point to Point Communications, Inc	Point to Point Communications, Inc
20010854	Dr. Roy J. Shanker	Waste Management, Inc	Signal Capital Sherman Station One Inc Signal Capital Sherman Station, Inc Waste Management, Inc Wheelabrator Cum Services, Inc Wheelabrator Frackville Energy Company Inc Wheelabrator Frackville Properties Inc Wheelabrator Fuel Services, Inc Wheelabrator Hudson Energy Company, Inc Wheelabrator Lassen Inc Wheelabrator Martell Inc Wheelabrator NHC Inc Wheelabrator Polk Inc Wheelabrator Ridge Energy Inc Wheelabrator Shasta Energy Company, Inc Wheelabrator Sherman Station Two Inc
20010855	Duke Energy Corporation	Waste Management, Inc	Signal Capital Sherman Station One Inc Signal Capital Sherman Station, Inc Waste Management, Inc Wheelabrator Cum Services, Inc Wheelabrator Frackville Energy Company Inc Wheelabrator Frackville Properties Inc Wheelabrator Fuel Services, Inc Wheelabrator Hudson Energy Company Inc Wheelabrator Lassen Inc Wheelabrator Martell Inc Wheelabrator NHC Inc Wheelabrator Polk Inc Wheelabrator Ridge Energy Inc Wheelabrator Shasta Energy Company, Inc Wheelabrator Sherman Station Two Inc
20010856	Duke Energy Corporation	BTA Holdings, Inc	BTA Holdings, Inc
20010871	Carson/LIN SBS, L.P	Western New York Public Broadcasting Association.	Western New York Public Broadcasting Association.
20010872	Joe Fojtasek	Western New York Public Broadcasting Association.	Western New York Public Broadcasting Association.

Trans No.	Acquiring	Acquired	Entities
20010981	Metsaliito Osuuskunta	International Paper Company	International Paper Deutschland, Inc
Transactions Granted Early Termination—12/18/2000			
20010764	Equilease Holding Corp	Delta, plc	Delta America Inc, United Power Corporation.
20010843	PJM Interconnection, L.L.C.	Conectiv	Conectiv.
20010903	Spectrum Holding, Inc	BP Amoco p.l.c.	BP Amoco p.l.c.
20010919	Pharmaceutical Product Development Inc.	Axys Pharmaceuticals, Inc	PPGx, Inc
20010931	Maurice B. Tose	XYPOINT Corporation	XYPOINT Corporation.
Transactions Granted Early Termination—12/19/2000			
20010691	Froedtert Health Systems, Inc	Community Health Care Services of Menomonee Falls, Inc.	Community Health Care Services of Menomonee Falls, Inc
20010729	Bruce Wasserstein	Dresdner Bank AG	Dresdner Bank AG.
20010780	Stephen Adams	PNE Media Holdings, LLC	PNE Media, LLC.
20010802	eVolution Global Partners L.P	American Express Company	MarketMile, Inc
20010836	Manafort Brothers, Inc	Allied Waste Industries, Inc	American Disposal Services of Missouri, Inc
20010838	Hunting PLC	Estate of Charles A. Sammons	Composite Thread Protectors, Inc Vinson Supply Company.
20010841	C–MAC Industries Inc	Honeywell International, Inc	Honeywell International, Inc
20010842	Alec E. Gores	Honeywell International Inc	Honeywell International Inc
20010850	Tyco International Ltd	Eaton Corporation	Eaton Corporation.
20010851	Hick, Muse, Tate & Furst Equity Fund III, L.P.	ABFM Corporation	ABFM Corporation.
20010852	Willis Stein & Partners II, L.P	Anthony G. Telese	Quality Metal Works, Inc
20010862	SPX Corporation	Ray Ryan and Nancy Ryan	Central Tower, Inc Ryan Construction, Inc
20010863	Zahren Alternative Power Corporation	Northeast Utilities	Countryside Genco, LLC, Countryside Landfill Gasco, LLC. Morris Genco, LLC, Morris Gasco, LLC.
20010876	Thomas Weisel Capital Partners, L.P	Innovance, Inc	Innovance, Inc
20010906	Johnson & Johnson	SK Corporation	SK Corporation.
20010917	InterCept Group, Inc (The)	Shrigovin Misir	ICPT, LLC. SLMsoft.com, Inc
20010923	Reuters Group plc	Pearson plc	Financial Times Energy, Inc
20010934	Artisan Components, Incorporated	Synopsys Incorporated	Synopsys Incorporated.
20010961	Republic Services, Inc	Allied Waste Industries, Inc	BFI Waste Systems of North America, Inc
20010983	Limestone Electron Trust	El Paso Energy Corporation	West Georgia Generating Company, L.L.C.
20010986	Nokia Corporation	Ramp Networks, Inc	Ramp Networks, Inc
Transactions Granted Early Termination—12/20/2000			
20003903	Computer Sciences Corporation	Policy Management Systems Corporation.	Policy Management Systems Corporation.
20010672	The B.F. Goodrich Company	Raytheon Company	Raytheon Optical Systems.
20010765	Danaher Corporation	Equilease Holding Corp.	United Power Corporation.
20010792	Highland Holdings	Brian L. Roberts	Comcast Corporation.
20010793	Brian L. Roberts	Highland Holdings	Highland Holdings.
20010796	Harry J. Pappas	Thomas O. Hicks	Southwest Sports Television, L.P
20010866	SSPS Inc	ShowCase Corporation	ShowCase Corporation.
20010869	Radian Group Inc	Enhance Financial Services Group Inc	Enhance Financial Services Group Inc
20010870	Morgenthaler Partners VI, L.P	Innovance, Inc	Innovance, Inc
20010874	The AES Corporation	Andrew R. Fellon	Fellon-McCord & Associates, Inc, Alliance Gas Services, Inc
20010875	The AES Corporation	John C. McCord	Fellon-McCord & Associates, Inc, Alliance Gas Services, Inc
20010877	Azure Capital Partners	Innovance, Inc	Innovance, Inc
20010904	Cree, Inc	Spectrian Corporation	Spectrian Corporation.
20010907	Enron Corp.	Dr. Roy J. Shanker	Cabazon Holdings, LLC. Victory Garden Power Partners LLC.
20010910	Germain Motor Company	Richard F. Ruhl	Dick Ruhl Ford Sales, Inc
20010911	FL Selenia S.a.r.l	Pennzoil-Quaker State Company.	Pennzoil-Quaker State Company.
20010913	Jim Ratcliffe	Imperial Chemical Industries Plc	Chlor-Chemicals Businesses, Klea and Crosfield businesses.
20010920	Pequot Private Equity Fund II, L.P	Everest Broadband Networks, Inc	Everest Broadband Networks, Inc

Trans No.	Acquiring	Acquired	Entities
20010921	Leap Wireless International, Inc	Century Tel, Inc	MVI Corp., Inc, Century Personal Access Network, Inc
20010924	Pogo Producing Company	NORIC Corporation	NORIC Corporation.
20010926	Capital One Financial Corporation	InnoVentry Corp.	InnoVentry Corp.
20010928	Tyco International Ltd.	Simplex Time Recorder Business Trust	Simplex Time Recorder Business Trust.
20010929	Twin City Co-ops Federal Credit Union	Pioneer Plus Federal Credit Union	Pioneer Plus Federal Credit Union.
20010932	Audax Private Equity Fund, L.P	Patrick J. Purcell	Herald Media, Inc
20010933	Weston Presidio Captial IV, L.P	Patrick J. Purcell	Herald Media, Inc
20010937	SCI Systems, Inc	Telefonaktiebolaget L M Ericsson	Ericsson, Inc
20010940	Telecom Partners III, L.P	Formus Communications, Inc	Formus Communications, Inc
20010942	Finisar Corporation	Shomiti Systems, Inc	Shomiti Systems, Inc
20010945	724 Solutions, Inc	TANTAU Software, Inc	TANTAU Software, Inc
20010980	The Huron Fund LP	Jordan Industries, Inc	Riverside Book and Bible House Incorporated. World Bible Publishers, Inc
Transactions Granted Early Termination—12//21/2000			
20010763	El Paso Energy Corporation	PG&E Corporation	PG&E Gas Transmission Teco, Inc PG&E Gas Transmission, Texas Corporation.
20010433	Thoratec Laboratories Corporation	Thermo Electron Corporation	Thermo Cardiosystems Inc
20010436	Thermo Electron Corporation	Thoratec Laboratories Corporation	Thoratec Laboratories Corporation.
20010751	Biovail Corporation	Aventis	Aventis Pharma, Inc. Aventis Pharmaceuticals Inc.
20010908	Franciscan Services Corporation	Franciscan Sisters of the Poor	The Franciscan at St. Leonard.
20010947	London Bridge Software Holdings plc	Phoenix International Ltd., Inc	Phoenix International A.P. New Zealand. Phoenix International New York, Inc.
20010948	Institutional Venture Partners VIII, L.P.	Homestead.com, Inc	Homestead.com,Inc.
Transactions Granted Early Termination—12/22/2000			
20010676	Vallence Technology, Inc	Science Applications International Corporation.	Telcordia Technologies, Inc.
20010677	Science Applications International	Valence Technology, Inc	Valence Technology, Inc.
20010800	The B.F. Goodrich Company	Autoliv, Inc	OEA Aerospace, Inc.
20010873	MediaNews Group, Inc	AT&T Corp	Kearns-Tribune, LLC.
20010878	Paul Marciano	Guess?, Inc	Guess?, Inc.
20010879	Armand Marciano	Guess?, Inc	Guess?, Inc.
20010883	Yodlee.com, Inc	S1 Corporation	VerticalOne Corporation.
20010884	S1 Corporation	Yodlee.com, Inc	Yodlee.com, Inc.
20010887	Ferro Corporation	Imperial Chemical Industries, PLC	Indpoco Inc. (d/b/a/National Starch and Chemical Company).
20010889	Robert G. Liggett, Jr	Louis Elias	Elias Brothers Restaurants, Inc.
20010890	North Shore Long Island Jewish Health System, Inc.	Doctors' Hospital of Staten Island, Inc	Doctors' Hospital of Staten Island, Inc.
20010891	William A. Robinson	DHL International Limited	DHL International Limited.
20010894	Amerada Hess Corporation	LASMO plc	LASMO plc.
20010895	The Regence Group	Northwest Washington Medical Bureau	Northwest Washington Medical Bureau.
20010899	Verizon Communication Inc	ALLTEL Corporation	ALLTEL Communications, Inc.
20010901	Reilly Family Limited Partnership	Thomas Leclair	American Outdoor Advertising LLC.
20010902	Reilly Family Limited Partnership	Jonathan Levine	American Outdoor Advertising LLC.
20010938	The Procter & Gamble Company	Dr. Johns Products, Ltd	Dr. Johns Products, Ltd.
20010946	Exelon Corporation	Richard E. Wenniger	The Wenninger Company, Inc.
20010949	Tyco International Ltd	Rollin W. Mettler, Jr	Mechatronics, L.L.C. Molded Interconnect Device, LLC.
20011950	Tyco International, Ltd	John H. Mettler	Mechatronics, L.L.C. Molded Interconnect Device, LLC.
20010951	State Automobile Mutual Insurance Company.	Meridian Mutual Insurance Company	Meridian Mutual Insurance Company.
20010952	Delta Galil Industries, Ltd	Norton Sloan	Inner Secrets Inc.
20010956	Advance Food Company	Cargill, Inc.	Excel Corporation.
20010957	Cargill, Incorporated	Advance Food Company	Advance Retail Holdings, Inc.
20010964	State Automobile Mutual Insurance Company.	Meridian Insurance Group, Inc	Meridian Insurance Group, Inc.

Trans No.	Acquiring	Acquired	Entities
20010965	The Royal Bank of Scotland Group plc	Rolls-Royce plc	Certified Alloy Products, Inc. Trucast Inc. Ross Catherall Group plc and Ross & Catherall Limited. Trucast Limited, Vickers Engineering plc.
20010969	Verizon Communications Inc	James E. Douglas, Jr. and Jean A. Douglas.	HLD Cellular Corporation.
20010973	James A. Radley	Royal & Sun Alliance Insurance Group plc.	Alliance Assurance Company of America.
20010974	Affiliated Computer Services, Inc	Tyler Technologies, Inc	Business Resources Corporation Capital Commerce Reporter, Inc. Government Records Services, Inc. PRETS Holdings, Inc. RAM Quest Software, Inc. RTS Holdings, Inc. Title Records Corporation.
20010978	Anadarko Petroleum Corporation	Western Gas Resources, Inc	Pinnacle Gas Treating, Inc.
20010982	The SKM Equity Fund III, L.P	Whole Duty Investment, Ltd	Viewpoint International, Inc.
20010985	New York University	The Grand Union Company (debtor-in-possession).	The Grand Union Company (debtor-in-possession).
20010987	DLJ Merchant Banking Partners III, L.P.	Credit Suisse Group	Focus Technologies, Inc.
20010988	Medisys PLC	Chronimed Inc	MEDgenesis Inc.
20010989	Paul B. Prager	The Montana Power Company	Continental Energy Services, Inc.
20010990	William E. Bindley	Cardinal Health, Inc	Cardinal Health, Inc.
20010992	Safeway Inc	Genuardi's Willco, Inc	Genuardi's Willco, Inc.
20010995	Agilera.com, Inc	Applicast, Inc	Applicast, Inc.
20010996	Leica Geosystems Holdings AG	Dennis F. Nardoni	Laser Alignment, Inc.
20010997	Reinhard Mohn	Mortimer B. Zuckerman	F.C. Holdings, L.L.C. Fast Company Media, LLC.
20010998	Gerald W. Schwartz	I and K Distributors, Inc	I and K Distributors, Inc.
20010999	International Rectifier Corporation	Unisem, Inc	Unisem, Inc.
20011000	Agilent Technologies, Inc	Objective Systems Integrators, Inc	Objective systems Integrators, Inc.
20011001	SEACOR SMIT Inc	Philip G. & Judy C. Plaisance	Plaisance Marine Inc., LaSalle Offshore Inc. Seahorse Marine Inc.
20011002	L–3 Communications Holdings, Inc.	Thermo Electron Corporation	Coleman Research Corporation.
20011005	GATX Corporation	Rolls-Royce Plc.	Pembroke Group Limited.
20011008	Sesame Workshop	EM. TV & Merchandising AG	The Jim Henson Company, Inc.
20011011	GTFC Equity Investors, L.L.C.	MicroAge, Inc.	MicroAge Technology Services, L.L.C.
20011013	Reed International P.L.C.	George Schussel	DCI Management, Inc. DCI Massachusetts Business Trust. IT Media Group, Inc. O&P Incorporated. Software Lists, Inc.
20011014	Elsevier NV	George Schussel	DCI Management, Inc. DCI Massachusetts Business Trust. IT Media Group, Inc. O&P Incorporated. Software Lists, Inc.
20011017	Nextel Communications, Inc.	Chadmoore Wireless Group, Inc.	Chadmoore Wireless Group, Inc.
20011018	Constellation Brands, Inc.	Daniel R. Baty	Corus Brands, Inc.
20011032	Odyssey Investment Partners Fund, L.P..	Jeffrey D. Church	Trevecca Holdings, Inc.
20011036	Nordea Plc	Christiania Bank og Kreditkasse ASA	Christiania Bank og Kreditkasse ASA.
20011037	SEACOR SMIT Inc.	Rincon Marine, Inc.	Rincon Marine, Inc.
20011038	NextMedia Investors LLC	NextMedia Group II, Inc.	NextMedia Group II, Inc.
20011039	Plum Creek Timber Company, Inc.	Plum Creek Manufacturing Holding Company, Inc.	Plum Creek Manufacturing Holding Company, Inc.
20011043	National Software Corporation	Catapulse, Inc.	Catapulse, Inc.
20011045	Centrica plc	Sempra Energy	Energy America LLC.
20011046	Kingspan Group plc	Daniel and Patricia Baker, husband and wife.	Tate Global Corporation.
20011048	Francisco Partners, L.P.	marchFirst, Inc	marchFirst, Inc.
20011050	Krug International Corp.	Charterhouse Equity Partners, II, L.P.	Southern Health Corp./Clanton Hospital, Inc./Dexter Hospital.
20011052	Microsoft Corporation	USinternetworking, Inc	USinternetworking, Inc.
20011057	Bodycote International plc	Lindberg Corporation	Lindberg Corporation.
20011059	Medline Industries, Inc.	Sun Healthcare Group, Inc.	Sun Healthcare Group, Inc.

Trans No.	Acquiring	Acquired	Entities
20011060	The Drees Company	Allen G. Zaring, III	Zaring Homes, Inc., Zaring Homes of Indiana LLC. Zaring National Corporation.
20011064	Mott MacDonald Group Limited	Thermo Electron Corporation	The Killam Group Inc.
20011065	IAWS Group plc	Marvin M. Schwan	Orion Food Systems International, Inc.
20011072	Stone Energy Corporation	Basin Exploration, Inc.	Basin Exploration, Inc.
20011074	Toyota Automatic Loom Works, Ltd.	Toyota Motor Corporation	Toyota Motor Sales U.S.A., Inc. Toyota-Lift of Los Angeles, Inc.
20011077	The Auto Club Group f/k/a/ AAA Michigan/Wisconsin, Inc.	Cornhusker Motor Club	Cornhusker Motor Club.
20011082	Caterpillar Inc.	J. Garner Scott	Federal Financial Services, Inc. IronMart, Inc. Pioneer Machinery, Inc.
20011095	Boston Ventures Limited Partnership V	Jeremiah J. Harris	Production Resource Group, L.L.C., Signal Perfection, Ltd.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–1169 Filed 1–12–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 011 0022]

Winn-Dixie Stores, Inc., Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 8, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or James Fishkin, FTC/H–374, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3300 or 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 9, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/01/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW., Washington, DC 20580. Two paper copies of each comment should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Complaint and Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Winn-Dixie Stores, Inc. ''Winn-Dixie'' or ''the Proposed Respondent'') and Agreement Containing Consent Order ''the proposed consent order''). The Proposed Responent has also reviewed a draft complaint that the Commission contemplates issuing. The proposed consent order is designed to furnish the Commission with prospective relief in the markets affected by the proposed acquisition by Winn-Dixie of supermarkets and other assets of Jitney-Jungle Stores of America, Inc. (''Jitney-Jungle''). A plan of sale pertaining to the supermarkets involved in this case has been confirmed by the United States Bankruptcy Court for the Eastern District of Louisiana in In re Jitney-Jungle Stores of America, Case No. 99–17191, on December 15, 2000.

II. Description of the Parties and the Proposed Acquisition

Jitney-Jungle, owned principally by Bruckmann, Rosser, Sherill & Co., an investment company, runs most of its stores under the names ''Jitney-Jungle'' and ''Delchamps.'' Prior to its filing under Chapter 11 of the Bankruptcy Act on October 12, 1999, Jitney-Jungle operated nearly 200 supermarkets, and a lesser number of nearby gas stations and liquor stores, in Mississippi, Alabama, Louisiana, Florida, Arkansas, and Tennessee. Following that filing, Jitney-Jungle has closed more than 45 supermarkets and sold off at least ten (10) others. Following the solicitation of buyers for any and all of its stores, Jitney-Jungle proposed to sell 72 supermarkets to Winn-Dixie for a total purchase price of $85 million. Following an auction held under the auspices of the bankruptcy court, and as limited by the proposed consent order, Winn-Dixie plans instead to acquire 68 of the Jitney-Jungle stores for a reduced consideration.

Winn-Dixie is a Florida corporation headquartered in Jacksonville, Florida. It operates more than 1,000

supermarkets in fourteen southeastern states and the Bahamas. Winn-Dixie reported sales of $14.1 billion for fiscal 1999.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (*i.e.*, the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire to one-stop shop for food and grocery products. They carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units (''SKUs'')), as well as a deep inventory of those SKUs in a variety of brand names and sizes. To accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space. So called ''supercenters'' operated by mass merchants such as Wal-Mart, which have full-line supermarkets attached to general merchandise stores, are included in the product market.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices on the prices primarily of food and grocery products sold at nearby supermarkets. They do not regularly price-check food and grocery products sold at other types of stores such as cub stores or limited assortment stores, and do not significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood ''mom & pop'' grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, and mass merchants, do not effectively constrain most prices at supermarkets. These other stores operate significantly different retail formats and sell far more limited assortments of items. None of these formats would constrain a price increase taken by supermarkets.

The draft complaint alleges that the relevant sections of the country in which to analyze the acquisition include, among others, the areas in and near the following cities and towns: Niceville, Florida; Gulf Breeze, Florida; Destin, Florida; and the Gulfport-Biloxi area of Mississippi, which consists of the parts of Hancock, Harrison, and Jackson counties that include Waveland, Bay Saint Louis, Pass Christian, Long Beach, Gulfport, Biloxi D'Iberville, and Ocean Springs, and narrower markets contained therein, including Gulfport and Biloxi (the ''Relevant Geographic Markets'').

Jitney-Jungle and Winn-Dixie are actual and direct competitors in all of the above listed markets. The acquisition will eliminate that competition. The draft complaint alleges that each of the post-merger markets would be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as ''HHI'') or by four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Jitney-Jungle and Winn-Dixie would have a combined market share that ranges from slightly less than 34% to 100% in the Relevant Geographic Markets. The post-acquisition HHIs in the Relevant Geographic Markets range from just over 2,400 points to 10,000 points.

The draft complaint further alleges that entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the Relevant Geographic Markets.

Notwithstanding all of this, Winn-Dixie's acquisition of Jitney-Jungle assets is not likely to create or enhance market power, or facilitate its exercise, to the extent that the imminent failure of Jitney-Jungle would cause those assets, or some of them, to exit the market. To that extent, post-acquisition performance in the relevant market is not likely to be worse than performance had the acquisition been blocked and the assets exited.

As previously indicated, Jitney-Jungle has sought protection from its creditors pursuant to Chapter 11 of the Bankruptcy Act. A review of that proceeding indicates that Jitney-Jungle will not be able to reorganize successfully under Chapter 11, and that but for the auction sale conducted under the auspices of the bankruptcy court Jitney-Jungle would be thrown into liquidation proceedings under Chapter 7 of the Bankruptcy Act. The key question, therefore, is whether Jitney-Jungle has made unsuccessful good-faith efforts to elicit reasonable alternative offers of acquisition of the Jitney-Jungle assets. Through a variety of means, including the retention of appropriate professionals to elicit offers for its assets and culminating in the previously mentioned auction sale under the auspices of the bankruptcy court, Jitney-Jungle has sought to elicit reasonable alternative bids. In the four Relevant Geographic Markets, Jitney-Jungle has been able to elicit bids that are timely, above the liquidation value of the assets, and otherwise acceptable to creditors. Therefore, the Commission concluded that in the Relevant Geographic Markets the proposed acquisition would be anticompetitive because it would eliminate substantial, direct, and ongoing competition. In all other areas where Winn-Dixie directly competes against Jitney-Jungle, Jitney-Jungle has been unable to elicit bids that are timely, likely, above liquidation value of the assets, and otherwise acceptable to creditors. Therefore, the other areas where Winn-Dixie and Jitney-Jungle directly compete are not being challenged.

The draft complaint alleges that Winn-Dixie's proposed acquisition of various supermarket assets of Jitney-Jungle, if consummated, may substantially lessen competition in the four Relevant Geographic Markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets presently owned or controlled by Jitney-Jungle and supermarkets owned or controlled by Winn-Dixie; by increasing the likelihood that Winn-Dixie will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects raises the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the Relevant Geographic Markets alleged in the proposed complaint.

IV. Terms of the Agreement Containing Consent Order

The proposed consent order will furnish prospective relief in the markets affected by the proposed acquisition.[2] Under the terms of the proposed consent order, the Proposed Respondent must not, for a period of ten (10) years from the date the proposed consent order becomes final, acquire any interest in four identified Jitney-Jungle

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

[2] Acceptance of the proposed consent order for public comment terminates the Hart-Scott-Rodino waiting period and enables Winn-Dixie immediately to acquire the Jitney-Jungle assets.

supermarkets without the prior approval of the Commission.

Also for a period of ten (10) years, the Proposed Respondent must provide written notice to the Commission prior to acquiring any interest in a supermarket owner or operator, or any facility that has operated as a supermarket within the previous six (6) months, located in any of the Relevant Geographic Markets. Following notice, Proposed Respondent may not complete such an acquisition until after it has provided any information requested by the Commission during a specified waiting period. This provision does not restrict the Proposed Respondent's construction of new supermarket facilities on its own; nor does it restrict the Proposed Respondent from leasing facilities not operated as supermarkets within the previous six (6) months.

The proposed consent order also prohibits the Proposed Respondent, for ten (10) years, from entering into or enforcing any agreement that restricts the ability of any acquirer of any supermarket, leasehold interest in a supermarket, or interest in any retail location used as a supermarket within Okaloosa, Santa Rosa or Walton counties in Florida; Hancock, Harrison, Jackson or Lauderdale counties in Mississippi; St. Tammany Parish, Louisiana; or Mobile County, Alabama on or after January 1, 2000, to operate a supermarket at that site if such supermarket was formerly owned or operated by the Proposed Respondent. In addition, the Proposed Respondent may not remove fixtures or equipment from a store or property owned or leased in these counties that is no longer in operation as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy, (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Proposed Respondent, or (3) otherwise with the prior approval of the Commission.

The Proposed Respondent is required to provide to the Commission a report of compliance with the consent order beginning one (1) year from the date the proposed consent order becomes final and annually for each of the following nine (9) years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–1167 Filed 1–12–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION/DEPARTMENT OF STATE

Office of Communications; Cancellation of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low usage:

OF 298, Interagency Foreign Service National Employee Position Description.

DATES: Effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 3, 2001.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 01–1210 Filed 1–12–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 8:30 a.m. to 5 p.m., February 1, 2001 or ; 8:30 a.m. to 2 p.m., February 2, 2001.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The purpose of this hearing is to monitor to the progress of implementation of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act (HIPAA) and identified issues that need to be addressed to insure successful implementation. Specific hearing topics for the first day include: the Designated Standard Maintenance Organization's change process; data and transaction standard issues identify by the Healthcare Industry to date; Institutional Provider NDC code set concerns; and a status report from the standard developers on digital/electronic signature standards. The second half-day session will include a discussion of the Subcommittee's next steps related to Patient's Medical Record Information standards and the annual NCVHS report to Congress on HIPAA Administrative Simplification implementation progress.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will have to have the guard call for an escort to the meeting.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: January 8, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–1188 Filed 1–12–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1679]

Draft Compliance Policy Guidance for FDA Employees and Industry on Blood Donor Incentives; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft compliance policy guidance entitled ''Sec. 230.150 Blood Donor Incentives.'' The draft guidance is intended to provide guidance to FDA employees and industry for evaluating blood donor incentives that may consist of cash or other incentives.

DATES: Submit written comments on the draft guidance by March 19, 2001. General comments on agency guidance documents may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Compliance Policy (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. You may fax your request to 301–827–0852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. Submit written comments on this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JoAnne C. Marrone, Division of Compliance Policy (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1242.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 13, 1978 (43 FR 2142), FDA published a final rule requiring that blood and blood products intended for transfusion include a statement on the labels that indicated whether the products were collected from paid or volunteer donors. This labeling requirement appears at § 606.121(c)(5) (21 CFR 606.121(c)(5)). The regulation defines a ''paid donor'' as a person who receives monetary payment for a blood donation (§ 606.121(c)(5)(i)). A volunteer donor is a person who does not receive monetary payment for a blood donation (§ 606.121(c)(5)(ii)). The regulation also defines certain benefits that do not constitute monetary payment. Those benefits, described in § 606.121(c)(5)(iii), include time off from work, membership in blood assurance programs, and cancellation of non-replacement fees, as long as the benefits are not readily convertible to cash. Products collected from blood donors who have received such incentives may be labeled with the ''volunteer donor'' classification statement.

The requirement that the label of a blood product indicate whether the product came from a volunteer or a paid donor applies only to blood and blood components intended for transfusion. It does not apply to products that will be used for further manufacturing, such as Source Plasma.

If the donor receives an incentive other than cash, the incentive must be evaluated to determine if it is readily convertible to cash. The draft guidance document provides FDA employees and industry with some examples of incentives and identifies some factors to consider when determining whether an incentive is readily convertible to cash. The draft guidance advises FDA employees that they may cite deviations from blood and blood product labeling requirements on Form FDA 483 (inspectional observations).

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on blood donor incentives. The draft guidance is not intended for implementation at this time. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (65 FR 56468, September 19, 2000). This draft guidance document is being issued as Level 1 guidance consistent with GGP's.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by March 19, 2001. Submit to the contact person (address above) written comments regarding this draft guidance after March 19, 2001. Such comments will be considered when the draft guidance is finalized. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons interested in obtaining a copy of the draft guidance on the Internet may access the draft at http://www.fda.gov/ora/compliance__ref/cpg/default.htm.

Dated: January 5, 2001.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–1127 Filed 1–12–01; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4633–N–01]

Revisions to PHA Project-Based Assistance Program; Initial Guidance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The HUD Appropriations Act for Fiscal Year 2001 amends the existing laws that govern the amount of tenant-based housing choice voucher funding that may be used for project-based assistance. HUD plans to issue a rule revising the project-based program regulations at 24 CFR part 983 in accordance with the new law. However, many of the statutory changes do not involve or require agency discretion on implementation of the new law, and are immediately effective. This notice provides guidance to public housing agencies (PHAs) and other interested members of the public on those provisions that are effective immediately, and identifies statutory changes that require further rulemaking.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and

Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0477 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On October 27, 2000, the President signed into law the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. Law 106–377, 114 Stat. 1441) (''Appropriations Act''). Section 232 of the Appropriations Act substantially revises the provisions of the U.S. Housing Act of 1937 that govern the authority of a PHA to designate a portion of its available tenant-based voucher funds for project-based assistance (see 42 U.S.C. 1473f(o)(13) (as amended by ''Section 232'' of the Appropriations Act). The Conference Report on the Appropriations Act stated that the statutory changes to the project-based voucher program are intended to make project-basing of voucher assistance more flexible.

Consistent with legislative intent, it is also HUD's objective to make the project-based voucher program more flexible and more workable, and to help PHAs, owners, and eligible families in need of housing take immediate advantage of the new statutory features.

This notice provides information on the requirements of the new law for eligible families, PHAs, owners and other interested members of the public. The notice identifies which elements of the new project-basing law are effective immediately, and states how the law is to be implemented pending issuance of revised program regulations. The notice also identifies elements of the new law that must be implemented by rulemaking.

Section I: Important Changes to the Project-Based Program

The important changes made by section 232 of the Appropriations Act to the project-based program include:

• *Existing housing*. Prior law granted a PHA authority to project-base a portion of its available tenant-based funding only for (1) newly constructed units, or (2) rehabilitated units. Section 232 provides that a PHA may also use tenant-based funding to attach assistance to existing units.

• *Percent limit*. Under prior law, the number of units that a PHA could project-base was capped at the number supported by 15 percent of the total funding available to the PHA under its consolidated Annual Contributions Contract (ACC) for tenant-based assistance. The new law raises this cap to 20 percent of the funding available, and consequently to 20 percent of the baseline number of units in the PHA's voucher program. A PHA may now utilize funding for project-basing up to this new percent limit.

• *PHA Plan and deconcentration goals*. The new law integrates the project-based voucher option with the PHA Plan requirements. A PHA may enter into a housing assistance payments (HAP) contract to provide project-based voucher assistance only if the HAP contract is consistent with the PHA Plan (see 42 U.S.C. 1437c–1, implemented at 24 CFR part 903). Consistency with the PHA Plan means that there are circumstances indicating that project-basing of the units, rather than tenant-basing of the same amount of assistance, is an appropriate option. In addition, project-basing must be consistent with the statutory goals of ''deconcentrating poverty and expanding housing and economic opportunities.''

• *Partially assisted buildings*. The new law places a new cap of 25 percent on the number of dwelling units in any one building that may have project-based voucher assistance. However, the following types of housing are exempt from this cap: project-based dwelling units in single family properties and dwelling units specifically for elderly families, disabled families (as defined in 5 CFR 5.403(b)), or families receiving supportive services.

• *Family choice to move with continued assistance*. The family choice requirement has two components, a ''mobility'' component and a ''continued assistance'' component.

• *Mobility*. The HAP contract must provide that a family may move out of a project-based unit after 12 months.

• *Continued assistance*. If a family moves out of its project-based unit at any time after the first year of assisted occupancy, the PHA must offer the family available tenant-based rental assistance, either under the voucher program or under another comparable form of tenant-based assistance as will be defined in HUD regulations. Such alternative tenant-based assistance must be comparable to assistance under the voucher program in terms of income, assistance, rent contribution, affordability and other requirements.

• *Contract term*. HUD's present regulations only permit a PHA to provide project-based assistance within funding currently available under the ACC. Since voucher funding has recently been provided in one-year increments, PHAs have been permitted to enter into HAP contracts for the same period. Section 232 provides that the HAP contract between the PHA and the owner may be for a term of up to 10 years, although payments under that contract are subject to the future availability of appropriations and future availability of funding under the ACC.

• *Extension of contract term*. Section 232 revised the former statutory provision on extension of the HAP contract term (former 42 U.S.C. 1437f(o)(13)(B)). The new law provides that the PHA may contract with the owner of a project-based unit to extend the term of the HAP contract for such period as the PHA determines appropriate to achieve long-term affordability of the housing or to expand housing opportunities. All HAP contract extensions, however, must be contingent upon the future availability of appropriated funds.

• *Maximum initial gross rent, rent to owner and rent adjustments*. The new law provides that the HAP contract shall establish gross rents that do not exceed 110 percent of the established Fair Market Rent (''FMR''), or any HUD-approved ''exception payment standard'' (*i.e.*, a payment standard amount (for the PHA's tenant-based voucher program) that exceeds 110 percent of the published FMR) for the area where the project is located. In addition, if a unit has been allocated a low-income housing tax credit under the Internal Revenue Code of 1986 at 26 U.S.C. 42, but is not located in a ''qualified census tract'' under that law, the rent to owner may be established at any level that does not exceed the rent charged for comparable units in the same building that receive the tax credit but do not have additional rental assistance.

The new law provides that a HAP contract between the PHA and an owner must provide for adjustments of rent to owner during the contract term, and the adjusted rents must be reasonable in comparison with rents charged for comparable units in the private, unassisted local market. The statutory maximum rent limits apply both to the establishment of the initial rent to owner (as defined in 24 CFR 982.4) at

the beginning of the HAP contract term, and to adjustments of rent to owner during the HAP contract term.

Within the limitations mentioned above, the initial gross rent to owner may differ from payment standard amounts for the PHA's tenant-based voucher program. However, just as in the regular tenant-based program, and in the project-based program under prior law, the initial and adjusted rent to owner must be reasonable in relation to rents charged in the private market for comparable unassisted units (see 42 U.S.C. 1437(f)(o)(10)(A), 24 CFR 982.507, and the ''reasonable rent'' element of SEMAP, 24 CFR 985.3(b)).

• *Tenant selection.* Section 232 revises and substantially codifies the tenant selection process for project-based voucher units. The new law states that the PHAs may place applicants referred by owners on the PHA's waiting list in accordance with the PHA's local waiting list policies and selection preferences.

As under the current program regulations, a PHA may not penalize applicants who reject an offer of a project-based unit or who are rejected by the owner of the housing. The PHA must maintain such applicant in the same position on the tenant-based assistance list as if an offer had not been made. In accordance with existing admission requirements, PHAs may establish selection preferences for project-based units that are consistent with the selection preferences in the PHA Plan.

As under the current program regulations, the PHA may elect to establish a separate waiting list for project-based voucher assistance, or to use a single common list for admission to the PHA's tenant-based and project-based assistance programs. If the PHA chooses to maintain a separate waiting list for project-based units, all PHA tenant-based assistance waiting list families who want project-based units must be permitted to place their names on the separate list.

The new law provides that admission to the project-based voucher program is subject to the same statutory income targeting requirement as the tenant-based program (42 U.S.C. 1437n(b)), instead of the individual project income targeting requirement that applies to other Section 8 project-based assistance (42 U.S.C. 1437n(c)(3)). The income targeting requirement provides, in general, that in any PHA fiscal year, at least 75% of the families admitted to a PHA's voucher program (which would include project-based voucher assistance) must be families whose annual income does not exceed 30 percent of median income for the area, as determined by HUD (see HUD definition of ''extremely low income families'' at 24 CFR 5.603).

• *Unit inspection and housing quality standards.* Units assisted with tenant-based or project-based voucher assistance must meet or exceed housing quality standards (HQS) established by HUD (42 U.S.C. 1437f(o)(8)). Section 232 states that the same HUD-prescribed HQS standards apply to project-based voucher assistance as apply to tenant-based voucher assistance (42 U.S.C. 1437f(o)(13)(F)).

Before and during the term of assistance, units are inspected for compliance with the HQS. In general, the same statutory PHA inspection requirements apply to project-based voucher assistance as to the tenant-based voucher program (42 U.S.C. 1437f(o)(8) and 1437f(o)(13)(F)). As in the tenant-based voucher program, a PHA must inspect 100 percent of project-based voucher units before entering into the HAP contract, and may only enter into a HAP contract for units that fully comply with the HQS. There is, however, a change in the annual HQS inspection requirements for the project-based voucher program. In the tenant-based program—where each unit is assisted under a separate HAP contract for each individual assisted family—the PHA must inspect each assisted unit annually. The new law provides that in the project-based voucher program, a PHA is not required to inspect each assisted unit in a project annually, thus allowing annual inspection of a representative sample of the project-based voucher units in a project.

• *Vacant units.* The new law permits a PHA, at its discretion, to continue providing assistance for a unit that becomes vacant (after commencement of assisted occupancy by a family) for up to a maximum of 60 days. Such payments may only be made if the vacancy is not the fault of the owner, and the owner takes ''every reasonable action'' to minimize the likelihood and extent of vacancies.

Section II. New Statutory Provisions That Are Non-Discretionary and Effective Immediately

This section provides guidance regarding implementation of provisions on project-basing in Section 232 of the Appropriations Act that are immediately effective. Except where this notice specifies otherwise, the present project-based regulations at 24 CFR part 983 continue to apply to newly constructed and substantially rehabilitated housing and now also apply to existing housing. Upon determination of good cause and subject to statutory limitations, HUD may waive any provision of this notice and the applicable project-based regulations in accordance with 5 CFR 5.110. Nothing in this notice affects the rights of owners and participants under existing contracts in HUD's Section 8 project-based certificate program. In the event of changes to this notice in future rulemaking concerning the project-based voucher program, HUD will take into account actions taken in compliance with this notice.

• *Authorization to provide project-based vouchers for existing housing.* Consistent with the project-based statute before amendment by Section 232, present regulations at 24 CFR part 983 only authorize project-based voucher assistance for newly constructed or rehabilitated units. Section 232 now also authorizes project-based assistance for existing housing. In accordance with the new law, a PHA may now enter HAP contracts that attach project-based voucher assistance to existing housing units that fully meet the housing choice voucher program HQS (see 24 CFR 982.401) but that would not have qualified for project-basing as newly constructed or rehabilitated units.

A housing unit will be considered an ''existing unit'' for purposes of the project-based voucher program if, at the time of the PHA's written notice of selection of the project for project-based assistance, the units require a maximum expenditure of less than $1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems) to comply with the HQS.

A. Inapplicability of Certain Current Part 983 Regulations to New Commitments of Project-Based Vouchers

24 CFR 983.3 (c) and (d) of the present regulation, which are designed to assure that commitments of project-based assistance do not exceed amounts currently appropriated and available under the ACC, are inapplicable because the new law authorizes PHAs to enter into project-based HAP contracts for up to ten years, subject to the future availability of appropriations. In addition, the maximum percentage limit for project-based assistance has been raised to twenty percent of the baseline number of units in the PHA's voucher program.

24 CFR 983.4, HUD review of PHA plans to attach assistance to units, is inapplicable.

24 CFR 983.9(a) implemented the prior statutory prohibition of project-based assistance for units to be

constructed or rehabilitated with U.S. Housing Act funds. This requirement is eliminated in the new law. Consequently section 983.9(a) is no longer applicable.

24 CFR 983.151(b) and (c), on term and renewal of HAP contracts, have been modified as described in this notice. The maximum potential term is now 10 years, subject to the future availability of appropriations and future availability of funding under the PHA's ACC. The PHA will determine the initial HAP contract term. The new law allows PHAs to determine the appropriate period for an extension, whereas previously (within the constraints imposed by available funding under a current ACC), HUD decided whether and for what period to approve renewals of expiring HAP contracts.

24 CFR 983.203(a)(6) is inapplicable, and 983.203(d)(3)'s declaration that a family that moves does not have any right to continued assistance is inapplicable.

B. Inapplicability of Certain Current Regulations to Project-Based Assistance for Housing in Existing Structures

The provisions of the present regulation that restrict assistance to newly constructed or rehabilitated units (see 24 CFR 983.7(b)(1) and (2)) do not apply to project-based voucher assistance for housing in an existing structure in accordance with Section 232 and this notice. In addition, the following regulatory provisions of 24 CFR part 983 do not apply to project-based assistance for housing in an existing structure:

Site and neighborhood standards at § 983.6;

- Rehabilitation requirements at section 983.8;
- Requirements for minimizing displacement because of rehabilitation in section 983.10(a);
- Subpart B—Owner Application Submission to Agreement, except 24 CFR 983.51, which is discussed further below; and
- Subpart C—Agreement and New Construction or Rehabilitation Period, except the provisions of paragraphs 983.103(d) regarding notification of vacancies and 983.104(c) regarding inspection to meet HQS.
- *Unit selection policy, advertising, and owner application requirements for existing housing with assistance attached to 25 percent or fewer of the units in a building.* For existing housing developments in the project-based voucher program, which have assistance attached to no more than 25 percent of the development's units, the PHA must advertise the availability of the project-based assistance. Such advertisements must meet standards comparable to those in 24 CFR 983.51(b); otherwise, section 983.51 does not apply to these projects.

Specifically, the PHA must advertise in a newspaper of general circulation that the PHA will accept applications for assistance for existing housing projects. The advertisement must be published once a week for three consecutive weeks; specify an application deadline of at least 30 days after the date the advertisement is last published; specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available for this purpose; and state that only applications submitted in response to the advertisement will be considered. The PHA advertisement must also state the PHA's selection policies. In all cases, PHAs must maintain documentation of responses to advertisements or competitive proposals received in response to the PHA notice.

For existing housing developments with more than 25 percent project-based units (*i.e.,* at this time, for the elderly and special populations only, since the supportive services exception to the 25% cap is not implemented in this notice), and for newly constructed or rehabilitated units, the PHA must establish policies for public advertisement and competitive selection of units to be assisted with project-based voucher assistance. 24 CFR 983.51 is applicable.

C. 20 Percent Limit

Section 232 requires PHAs that participate in the project-based voucher program to comply with the statutory language that states that ''[n]ot more than 20 percent of the funding available for tenant-based assistance under this section that is administered by the [public housing] agency may be attached to structures pursuant to this paragraph'' [bracketed material added]. This language supersedes 24 CFR 983.3(b), and is effective immediately. Therefore, the total cumulative number of project-based units, including units previously placed under AHAP or HAP in the PHA's project-based certificate program, may not exceed 20 percent of the baseline number of units in the PHA's voucher program.

D. Consistency With PHA Plan

Until HUD issues further instructions, PHAs submitting PHA Plans that wish to use the project-based voucher program (as revised by Section 232) must include—as a required attachment to the PHA Plan template—a statement of the projected number of project-based units and general locations and how project basing would be consistent with their PHA Plans. If a PHA wishes to use the project-based voucher program before the anticipated approval date of the PHA's next PHA Plan, the PHA may do so by adding the information as an amendment to the PHA Plan and following the regulations and notices for such PHA Plan amendments.

As with all programs that are covered by the PHA Plan, the program must be carried out in conformity with the nondiscrimination requirements specified in the PHA Plan regulations, and must affirmatively further fair housing as required by the PHA Plan regulations.

E. Consistency With the Goals of Deconcentrating Poverty and Expanding Housing and Economic Opportunities

Section 232 requires, in addition to consistency with the PHA Plan, that a contract for project-basing under the voucher program be consistent with the goals of deconcentrating poverty and expanding housing opportunities. Until HUD issues further instructions, HUD will implement the deconcentration of poverty requirements in Section 232 by requiring that all new project-based assistance agreements or HAP contracts be for units in census tracts with poverty rates of less than 20 percent, unless HUD specifically approves an exception.

F. Partially Assisted Building Requirement

A PHA may not enter into an agreement or HAP contract or other binding commitment to provide project-based voucher assistance for more than 25 percent of the units in any one building, except for single-family dwellings and projects for elderly families and disabled families.

HUD is not implementing through this notice the exception for buildings for families receiving supportive services. HUD will address that exception through rulemaking, which will define ''supportive services.'' In accordance with existing program usage, single family dwellings refer to 1–4 family dwellings.

If the PHA had entered into an agreement for project-based units prior to the effective date of this notice, section 232 provides that such buildings may have the assistance extended or renewed, notwithstanding this section on partially assisted buildings, 42 U.S.C. 1437f(o)(13)(D), as amended by the Appropriations Act.

G. Family Choice to Move With Continued Assistance

The new law provides that assisted families may move from the assisted building, and retain federal housing assistance. For the continued assistance option, Section 232, similar to existing 24 CFR 983.206(d)(2), requires for new HAP contracts that the owner permit the assisted tenants to move from the housing at any time after the family has occupied the dwelling unit with project-based voucher assistance for 12 months.

The law now provides that the PHA must provide the family with housing choice voucher assistance or such other tenant-based rental assistance that is subject to comparable income, assistance, rent contribution, affordability and other requirements. HUD will set the standards as to what may qualify as comparable assistance by regulation, but, for new HAP contracts incorporating this requirement, the PHA must in the interim use voucher assistance available under the ACC to provide tenant-based assistance for the family. If no such assistance is available at the time the family moves, the PHA must give the family priority to receive the next available tenant-based voucher. Vouchers under funding allocations targeted by HUD for special purposes (*e.g.,* family unification, mainstream disabled) are not available for this purpose, since they are required to be used only for the targeted purpose.

H. HAP Contract Term

The new law provides that, for HAP contracts entered after the effective date of the law, a HAP contract between a PHA and an owner of housing under this program may have a duration of up to 10 years (as determined by the PHA), subject to the future availability of sufficient appropriated funds under the PHA's consolidated ACC with HUD.

Upon expiration of the HAP contract term, the new law provides that the PHA may agree with the project-based housing owner to extend the HAP contract for such period as the PHA determines appropriate to expand housing opportunities (as well as an extension to assure long-term affordability of the housing, as provided under prior law). All HAP contract extensions must be contingent upon the future availability of appropriated funds.

I. Rent Limits

The new law provides that the HAP contract shall establish gross rents (rent to owner plus the allowance for tenant-paid utilities) that do not exceed 110 percent of the established Fair Market Rent (''FMR''), or any HUD-approved ''exception payment standard'' (*i.e.,* a payment standard amount that exceeds 110 percent of the published FMR) for the area where the housing is located.

If a unit has been allocated a low-income housing tax credit under the Internal Revenue Code of 1986 at 26 U.S.C. 42, but is not located in a ''qualified census tract'' as defined in the law, the rent to owner may be established at any level that does not exceed the rent charged for comparable units in the same building that receive the tax credit but do not have additional rental assistance.

Within the limitations mentioned above, the initial rent to the owner may differ from payment standard amounts in the payment standard schedule adopted for the PHA's tenant-based voucher program. However, just as in the regular tenant-based program and the project-based program under prior law, the initial and adjusted rent to owner must be reasonable in relation to rents charged in the private market for comparable unassisted units (see 42 U.S.C. 1437(f)(o)(10)(A).

J. Rent Adjustments During the Term of the HAP Contract

Section 232 provides that a housing assistance payments contract for project-based voucher assistance shall provide for rent adjustments and that the adjusted rent for any assisted unit shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market and may not exceed the maximum rent limits permitted under the statutory limitations summarized above. Determination of whether rent is reasonable in relation to comparable units shall be governed by 24 CFR 983.256.

The annual rent adjustment provisions at 983.254 and the special rent adjustment provisions at 983.255 shall only be applicable if the AHAP with the owner was executed before the effective date of this notice. These annual and special adjustment regulatory provisions do not apply to project-based assistance for existing housing pursuant to this notice, and do not apply if the Agreement for newly constructed or rehabilitated housing was executed on or after the effective date of this notice.

K. Family Share of Rent and Housing Assistance Payment

The housing assistance payment is calculated in accordance with 24 CFR 983.260 as the gross rent minus the total tenant payment. The family share is calculated in accordance with 24 CFR 983.261 by subtracting the amount of the HAP from the gross rent.

L. Tenant Selection

The PHA selection system for project-based units must comply with the requirements specified below, which in most respects (except for the income targeting provision) are a codification of present regulatory and contractual requirements:

- Income targeting. The requirements of 42 U.S.C. 1437n(b) and 24 CFR 982.201(b)(2) govern the selection of eligible families for this program, and generally provide that not less than 75 percent of families admitted annually to the PHA's combined tenant-based and project-based voucher program shall be families whose incomes do not exceed 30 percent of the area median, as determined by HUD.
- Applicants may only be selected from the PHA waiting list.
- A PHA may only maintain a separate project-based waiting list if all PHA tenant-based assistance applicants who seek project-based housing can be placed on this list upon request and without penalty to any other application for assisted housing they may have pending. Subject to its waiting list policies and selection preferences specified in the PHA administrative plan, the PHA may place a family referred by an owner of project-based voucher units on its waiting list.

If a PHA chooses to establish a separate waiting list for project-based assistance, the PHA must give all applicants currently on its waiting list for tenant-based assistance the opportunity to also have their names placed on the waiting list for project-based assistance in accordance with the PHA's established selection policies.

- As in the current project-based program, the PHA must refer families to housing units from the waiting list according to its regular applicant selection policies. If an applicant does not rent a unit with project-based assistance, or the owner turns an applicant down for admission to a project-based unit, the applicant may not be removed from the PHA's tenant-based assistance waiting list for that reason but must maintain its position on the list as though no offer of housing had been made.

Vacant units. A HAP contract must be in a form prescribed by HUD. The PHA may enter into such a contract that agrees to provide vacancy payments up to 60 days after a unit becomes vacant, in an amount not to exceed the rent to the owner as provided by the HAP contract on the day the family vacated.

The PHA may only make such payments for a vacant unit if:

(1) The vacancy was not the owner's fault, and

(2) The PHA and owner take action to minimize the likelihood and length of any vacancy.

Reduction of contract units after vacancy. Except for units for which an AHAP was executed before the effective date of this notice, the new law supersedes 24 CFR 983.152(b) and (c). Instead, the following provisions apply:

If no eligible family rents a vacant unit within 120 days (commencing on the first day of the month when the vacancy occurs), the PHA may terminate its commitment to make any additional housing assistance payments for the unit for the balance of the HAP contract term. The PHA may use the amounts so saved to provide other voucher assistance.

The policy guidance and implementation directives of this notice remain in effect until the new project-based voucher changes in law have been fully implemented through a new regulation. HUD will endeavor to answer any questions PHAs may have that arise that are not anticipated in this notice.

HUD will soon issue a new required tenancy addendum and HAP contract for the project-based voucher program as implemented by this notice.

Dated: January 8, 2001.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–999 Filed 1–12–01; 8:45 am]

BILLING CODE 4210–33–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meeting

TIME AND DATE: January 30, 2001, 10 a.m.–3 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session except for the portion specified as closed session as provided in 22 CFR Part 1004.4 (f).

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the November 30, 2000, Meeting of the Board of Directors
- Interim President's Report
- Congressional Activities and Plans for Fiscal Year 2001
- Expansion of the Advisory Council
- Review of Business Sector Participation in Foundation Grants
- Presentation of the Foundation's Results System and Indicators
- Review of a Sample of Successful Closed-Out Grants
- Closed Session To Discuss Personnel Issues. Closed session as provided in 22 CFR Part 1004.4 (f)

CONTACT PERSON FOR MORE INFORMATION: Carolyn Karr, General Counsel, (703) 306–4350.

Dated: January 11, 2001.

Carolyn Karr,

General Counsel.

[FR Doc. 01–1335 Filed 1–11–01; 12:49 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mud Island Addition to Wyandotte National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Director of the U.S. Fish and Wildlife Service approved the expansion of the Wyandotte National Wildlife Refuge by accepting the donation of Mud Island, located in the Detroit River, adjacent to Ecorse, Michigan.

DATES: This action was effective on January 5, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Larson, Chief, Ascertainment and Planning Branch, U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 55111–4056. Telephone 612–713–5430

SUPPLEMENTARY INFORMATION: The authority to accept donation of real property is contained in the Fish and Wildlife Act of 1956 (16 U.S.C. 742f) as amended.

Mud Island will contribute toward the ecosystem goals of the Service by preserving valuable aquatic shoals for the benefit of migratory waterfowl, especially diving ducks, and potential spawning habitat for the lake sturgeon.

Based on the information contained in the decision document, a Categorical Exclusion was signed on November 30, 2000, by the Regional Director. We will expand the Wyandotte National Wildlife Refuge by accepting the donation of Mud Island.

Dated: January 5, 2001.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service, Washington, DC.

[FR Doc. 01–1181 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Jerry Jennings, Fallbrook, California, on behalf of the Toucan Preservation Center (CB006). The applicant wishes to amend approved cooperative breeding program CB006 to include Green aracari (*Pteroglossus viridis*), Black-necked aracari (*Pteroglossus aracari*), and Blue-headed macaw (*Ara couloni*). The Toucan Preservation Center maintains responsibility for oversight of this program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 10, 2001.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 01–1246 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–01–1020PG]

Notice of Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Meeting notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will

meet in Boise. Potential agenda topics are off highway vehicle use, sage grouse habitat management, wild horse roundup and adoption and other resource management issues.

DATES: February 14, 2001. The meeting will begin at 9 a.m. Public comment periods will be held at 9:30 a.m. and 3:30 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Mary Jones, Lower Snake River District Office (208–384–3305).

Dated: January 2, 2001.

Daryl L. Albiston,

Acting District Manager.

[FR Doc. 01–1130 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–1430–EU: G–01–0070]

Realty Action: Partial Cancellation of Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Partial cancellation of Notice of Realty Action—Sale of public land.

SUMMARY: The Notice of Realty Action—Sale of Public Land in Harney County, Oregon, published in the **Federal Register**, Volume 65, No. 222, on November 16, 2000, on Pages 69327–69329 is hereby cancelled as it relates to the sale of the following parcel only:

OR–55327—W.M., T. 27 S., R. 35E., Sec. 7, Lots 3, 4, NE¼SW¼; Sec. 18, Lots 1,2.

On December 19, 2000, in response to the Notice of Realty Action, a protest was filed concerning the sale of Parcel No. OR–55327. The parcel is being withdrawn from sale pending review of the merits of the protest. Upon resolution of the protest the parcel may be included in future offerings. All other provisions of the Notice of Realty Action remain in effect.

On January 16, 2001 this notice also opens the land to the discretionary land laws which include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

ADDRESSES: Comments should be submitted to the Three Rivers Resource Area Field Manager, HC 74–12533 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale cancellation is available from Holly LaChapelle, Land Law Examiner, Three Rivers Resource Area at the above address, phone (541) 573–4501.

Dated: January 4, 2001.

Craig M. Hansen,

Three Rivers Resource Area Field Manager.

[FR Doc. 01–1129 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Cascade Resource Management Plan; Draft Environmental Assessment

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation) has prepared a draft environmental assessment (Draft EA) to evaluate alternatives to update the Lake Cascade Resource Management Plan (RMP). The updated RMP will serve as a blueprint for the future use, management, and site development of Reclamation lands and resources at the reservoir for the next 10 years.

DATES: Public hearings are scheduled from 7:30 to 9:30 p.m. on January 31, 2001 in Boise, ID and on February 1, 2001 in Cascade, ID. The formal public hearings will be preceded by open houses from 6 to 7 p.m., and a presentation describing the project from 7 to 7:30 p.m. Written comments on the Draft EA will be accepted through February 22, 2001.

ADDRESSES: The public hearings will be held at the following locations:

Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID

American Legion Hall, 105 E. Mill Street, Cascade, ID

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Those wishing to obtain a copy of the Draft EA or schedule time in advance to make oral comments at the hearing(s) may contact Ms. Carolyn Burpee-Stone at (208) 378–5395. Persons requiring any special services at the public hearing should contact Ms. Connie Wensman at (208) 378–5317 or TDD #1–800–377–3529, by January 22, 2001.

SUPPLEMENTARY INFORMATION: Speakers will be called in order of their requests. Requests to comment may also be made at each hearing and speakers will be scheduled to follow the advance requests. Comments will be limited to 3 minutes and will be recorded by a court stenographer to be included in the hearing record.

A planning process that included Federal, State, and local governments, Tribes and the public in developing alternatives to update the 1991 Lake Cascade RMP has occurred over the past two years. The Draft EA evaluates three action alternatives that combine various levels of recreation development and resource conservation. The Preferred Alternative emphasizes balanced recreation development and natural resource management. In addition to the action alternatives, the No Action Alternative of continuation of existing management practices was also evaluated. The Draft EA is available for viewing on the internet at *http://www.pn.usbr.gov/project/rmp/cascade_pub/news.htm .*

Dated: January 5, 2001.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 01–1229 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pick-Sloan Missouri Basin Program, Eastern and Western Division Proposed Project Use Power Rate

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of time for comments concerning the proposed Pick-Sloan Missouri Basin Program, Eastern and Western Division, Project Use Power rate adjustment.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing a rate adjustment (proposed rate) for Project

Use Power for the Pick-Sloan Missouri Basin Program (P–SMBP), Eastern and Western Division. The proposed rate for Project Use Power is to recover all annual operating, maintenance, and replacement expenses. The analysis of the proposed Project Use Rate is included in a booklet available upon request. The proposed rate for Project Use Power will become effective April 1, 2001.

This notice provides the opportunity for public comment. After review of comments received, Reclamation will consider them, revise the rates if necessary, and recommend a proposed rate for approval to the Commissioner of the Bureau of Reclamation.

DATES: The comment period is being extended with the publication of this notice in the **Federal Register**. To be assured consideration, please submit comments on or before February 26, 2001.

ADDRESSES: Written comments should be sent to Jim L. Wedeward, GP–2020, Power O&M Administrator, Bureau of Reclamation, P.O. Box 36900, Billings MT 59107–6900.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

All booklets, studies, comments, letters, memoranda, and other documents made or kept by Reclamation for the purpose of developing the proposed rate for Project Use Power will be made available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59107–6900.

FOR FURTHER INFORMATION CONTACT: Jim L. Wedeward (406) 247–7705, Internet: jwedeward@gp.usbr.gov

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Flood Control Act of 1944 (58 Stat. 887).

Beginning April 1, 2001, Reclamation proposes to:

(a) increase the energy charge from 2.5 mills/kWh to 10.76 mills/kWh

(b) the monthly demand charge will remain at zero.

The Project Use Power rate will be reviewed each time Western Area Power Administration (Western) adjusts the P–SMBP Firm power rate. Western will conduct the necessary studies and use the methodology identified in this rate proposal to determine a new rate.

The existing rate schedule MRB–P10 placed into effect on November 1, 1986, will be replaced by rate schedule MRB–P11.

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq;* Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and Reclamation's Regulations (10 CFR Part 1021), Reclamation has determined that this action is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement.

Dated: January 9, 2001.

Gerald W. Kelso,

Assistant Regional Director, Great Plains Region, Bureau of Reclamation.

[FR Doc. 01–1166 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Review)]

In the Matter of Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From The Netherlands; Notice of Commission Determination To Conduct a Portion of The Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of foreign producer Twaron Products bv and importer Twaron Products, Inc. (''Twaron''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for January 9, 2001, *in camera. See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Karen V. Driscoll, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3092, e-mail *kdriscoll@usitc.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Twaron has justified the need for a closed session. In this review, significant data for both the foreign and domestic industries are business proprietary. Twaron seeks a closed session in order to fully address the issues before the Commission without referring to business proprietary information. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by E.I. DuPont de Nemours & Company (''DuPont''), domestic producer opposing revocation of the antidumping duty order, followed by foreign respondent Twaron in support of revocation. During the public session, the Commission may question the parties following their respective presentations. Next, the hearing will include a 20-minute *in camera* session for a confidential presentation by Twaron and for questions from the Commission relating to the BPI, followed by a 20-minute *in camera* rebuttal presentation by DuPont and questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these investigations. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall time allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The Assistant General Counsel for Antidumping and Countervailing Duty Investigations, acting for the General Counsel, has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that a portion of the Commission's hearing in Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv.

No. 731–TA–652 (Review), may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: January 8, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–1221 Filed 1–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–444]

In the Matter of Certain Semiconductor Light Emitting Devices, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rohm, Inc., of Japan. A supplement to the Complaint was filed on January 4, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor light emitting devices, components thereof, and products containing same by reason of infringement of claims 1, 2, 4 and 6–45 of U.S. Letters Patent 6,084,899 and claims 1–5 and 9–23 of U.S. Letters Patent 6,115,399. The complaint further alleges that an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

FOR FURTHER INFORMATION CONTACT: Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 9, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor light emitting devices, components thereof, or products containing same by reason of infringement of claims 1, 2, 4, 6–44 or 45 of U.S. Letters Patent 6,084,899 or claims 1–5, 9–22 or 23 of U.S. Letters Patent 6,115,399, and whether an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Rohm Co., Ltd., 21, Saiin Mizosaki-cho, Ukyo-ku, Kyoto, 615–8585, Japan

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nichia Corporation, 491 Oka, Kaminaka-Cho, Anan, Tokushima, 774–8601, Japan

Nichia America Corporation, 3775 Hempland Road, Mountville, PA 17554

(c) Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: January 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–1222 Filed 1–12–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[A.G. Order No. 2353–2001]

Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice of final order.

SUMMARY: This publication contains the final version of the Attorney General's Order that is issued pursuant to sections 401 and 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Order specifies the types of community programs, services, or assistance for which all aliens remain eligible. This publication also responds to comments submitted regarding the Order.

DATES: This Notice is effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jessica Rosenbaum, Office of Policy

Development, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone (202) 514–3737 for general information. For information regarding particular programs, contact the federal agency that administers the program.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (''Welfare Reform Act'' or ''the Act''). The Act, among other things, vests in the Attorney General the authority to specify certain types of community programs, services, or assistance for which all aliens remain eligible. Pursuant to the Act, the Attorney General issued an Order (AG Order No. 2049–96) (''the Order'') implementing that authority, and making a ''provisional specification'' of such programs. The Order was published on August 30, 1996, at 61 FR 45985.

Under §§ 401 and 411 of the Act, aliens who are not ''qualified aliens'' (as defined in § 431 of the Act) are generally ineligible for federal, state, and local public benefits. However, there are a number of specified exceptions to those restrictions. Included in the list of statutory exceptions is a provision authorizing the Attorney General to identify programs, services, and assistance to which the Act's limitations on alien eligibility do not apply. Pursuant to §§ 401(b)(1)(D) and 411(b)(4), the Attorney General may specify only those types of programs, services, and assistance that meet all of the following three criteria: (1) Deliver in-kind services at the community level, including through public or private non-profit agencies; (2) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (3) are necessary for the protection of life or safety. Any programs that are exempted under this provision of the Act must meet all three of the foregoing requirements. A program meeting only one or two of the criteria does not qualify for exemption under this section of the Act.

Discussion of Comments

On September 15, 1997, the Department published a notice requesting public comments on the Order (62 FR 48308). The comment period ended on November 14, 1997. The Department received 48 comments from a variety of sources including private, non-profit organizations, as well as city, state, and federal agencies. The Department also received four comments on the Order in response to the Attorney General's notice of proposed rule-making: ''Verification of Eligibility for Public Benefits,'' which was published on August 4, 1998 (63 FR 41662). In developing this final Order, the Department of Justice also relied on the input of other appropriate federal agencies and departments. All comments have been considered in preparing this final Order. Any significant changes are discussed below.

Many commenters seemed to believe that unless the Attorney General exempted their program, they would be required to verify citizenship or immigration status of all applicants. While that is certainly true in some cases, a service provider should not assume that it must verify citizenship or immigration status simply because its program or service is not exempted by this Order. Service providers and other interested parties should refer to benefit-granting agencies' interpretations of the term ''federal public benefit'' as used in the Act in order to determine whether their program is a federal public benefit and therefore subject to the alienage restrictions of the Act. See, for example, the Department of Health and Human Services notice of interpretation of federal public benefit, 63 FR 41658 (Aug. 4, 1998) (identifying which of their programs provide ''federal public benefits'' subject to PRWORA's limitations on alien eligibility. HHS advises that HHS programs not listed in the notice, such as Community Health Centers, and HHS programs under the Ryan White CARE Act and the Older Americans Act, do not meet the statutory definition of ''federal public benefit'' and therefore do not have to verify the citizenship or immigration status of applicants or recipients under PRWORA.).

In the past, the Department of Justice has deferred to other benefit-granting agencies' interpretations of whether their programs fall within certain definitions under the Welfare Reform Act. *See, e.g.*, Department of Justice, Verification of Eligibility for Public Benefits, 63 FR 41662, 41664 (1998) (to be codified at 8 CFR pt. 104) (proposed Aug. 4, 1998) (in establishing proposed regulatory definition of ''federal public benefit,'' Immigration and Naturalization Service intends to give ''all appropriate deference to benefit granting agencies' application of the definition to the programs they administer''); Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61361 (1997) (directing interested parties with questions about the applicability of the Act to a benefit program to consult with the federal agency overseeing the program). Consistent with that practice, where commenters have raised questions about whether a particular program is a federal public benefit under the Act, the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit. Agencies and service providers should also note that section 432(d) of the Welfare Reform Act, which provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for Federal, State, or local public benefits, may be applicable to their programs. For more information about this exemption, see Department of Justice, Verification of Eligibility for Public Benefits, 63 FR 41662, 41664 (1998) (to be codified at 8 CFR pt. 104) (proposed Aug. 4, 1998).

The majority of commenters emphasized the need for the Attorney General to exempt their particular services because they believed them to be necessary for the protection of life or safety. Many of those commenters, however, did not take account of the legal requirement that a program or service must satisfy all three prongs of the test set forth by Congress. Any service that is exempted by the Order not only must be necessary to protect life or safety and be delivered in-kind at the community level, but also must not condition the provision, amount, or cost of services on a client's income. With respect to the last requirement, in other words, if a state or community service provider charges fees that vary with the clients' income level, or determines the clients' eligibility for services based upon their income or ability to pay, the program at issue does not satisfy prong two of the test and therefore is not covered by the Order regardless of how necessary for life or safety the program, service, or assistance may be.

Twenty comments were received from community services providers, while the rest were from concerned citizens, members of Congress, and city, state, and federal agencies. Many comments addressed a variety of concerns, but more than twenty-eight concerned services provided to people with HIV/AIDS. The majority of those comments asked the Attorney General to exempt categorically all programs funded under the Ryan White CARE Act, Housing Opportunities for People Living with AIDS (HOPWA) and the McKinney

Homeless Assistance Act due to the special nature of the AIDS epidemic. As already indicated, many of those programs may not be ''federal public benefits'' as determined by relevant benefit-granting agencies, and therefore an exemption under this Order is unnecessary. While the Act authorizes exemptions for ''programs, services, or assistance'' that meet the three-pronged test, the Attorney General has no authority to provide a blanket exemption for all programs authorized by a single statute. That is because one or more of those programs may fail to meet all of the requirements imposed by the statute. Agencies and service providers must assess each program individually to determine whether it meets the three-pronged test. While many, if not all, HIV/AIDS-related services are likely to meet the first and third prongs, any state or federally funded programs that are required as a condition of their funding to employ sliding scales, or that otherwise limit the access to services or the amount of such services according to a client's income or ability to pay would not qualify for exemption under the Attorney General's Order.

Thirteen comments were received concerning services for the elderly. The majority of those comments also sought categorical exemptions for services provided under a variety of statutes. Again, the Act does not give the Attorney General the authority to exempt groups of programs. For a program to be covered by the Order, it must meet all three prongs of the statutory test.

Twenty-three comments addressed the importance of shelter and safe housing. Those community programs cover a wide range of services from emergency shelter to lead paint abatement. While many shelter and housing programs are important to the protection of life or safety, each program must meet the requirements of the three-pronged test in order to be exempt under the Order. With respect to the specific issue of lead paint abatement programs, we note that HUD has determined that benefits under the Lead Hazard Control program are not federal public benefits within the meaning of section 401(c) of the Welfare Reform Act. In accordance with the Department's practice of deferring to the determinations of benefit granting agencies, we therefore note that there is no need to conduct any verification procedures with respect to the immigration status of individuals whose dwellings receive services under the Lead Hazard Control program. We therefore need not, at this time, consider whether such benefits should be exempted under section 401(b).

Nine comments emphasized the importance of access to health care in general. One commenter described health centers that have a sliding scale of costs for services. Such programs do not qualify for coverage under the Order as they fail to meet the prong of the Order related to means testing. However, another commenter explained that their health centers have a fundamental obligation to serve all patients regardless of their ability to pay. As stated above, where community-level health programs serve all eligible clients regardless of their ability to pay and do not administer any type of sliding scale fee schedule or other income or resource test, they are covered by the Attorney General's Order.

Some commenters argued that the administrative burden that would result from having to verify immigration status would outweigh any proposed savings that could be derived from denying benefits to unqualified aliens. It should be understood, however, that the decision to deny federal, state, and local public benefits to aliens not qualified to receive them was made by Congress. Title IV of the Act does provide several exceptions to this blanket denial, including the programs covered by this Order and an exception from verification for all non-profit charitable providers. See the Department of Justice, Proposed Rule, Verification of Eligibility for Public Benefits, 63 FR 41662, 41677 (Aug. 4, 1998). All programs and services covered by the Order are exempt from any requirement that verification be conducted, unless service providers are mandated to conduct such verification pursuant to federal, state, or local law other than the Welfare Reform Act.

A number of commenters sought clarification as to whether service providers were obligated to verify a benefit seeker's immigration status prior to providing services covered by the Order. The services exempted by the Order are one of several categories of services that were designated by Congress to remain available to all aliens regardless of their status as qualified or not qualified for welfare benefits. Accordingly, service providers are not obligated to verify immigration status before providing those services unless they are required to do so by a law other than the Welfare Reform Act.

The remaining comments addressed services to migrant farmers, the disabled, victims of domestic violence, child care, and mental health services. While all of those concerns are important to the protection of life or safety, each program must meet the requirements of the three-pronged test described above in order to be exempt under the Order.

Several providers of emergency shelter have expressed the concern that they may be barred from providing temporary housing to aliens not qualified for welfare benefits. The final Order, like the original Order, specifies that ''short term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children'' are deemed to be necessary for the protection of life or safety. Accordingly, programs and services of that type that deliver in-kind services at the community level and do not condition the provision of assistance, or the amount or cost thereof, on the individual recipient's income or resources are exempt from any requirement that verification be conducted, unless service providers are mandated to conduct such verification pursuant to federal, state, or local law other than the Welfare Reform Act.

Final Specification of Community Programs Necessary for the Protection of Life or Safety Under the Welfare Reform Act

Preamble

(1) The types of programs, services, and assistance enumerated in this Order are ones that Congress authorized the Attorney General to except from limitations on the ban on the availability of federal, state, or local public benefits imposed by Title IV of the Act.

(2) The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)).

(3) Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.

(4) Thus, unless required by some legal authority other than the Act, benefit providers who satisfy the requirements of this Order are not required to verify the citizenship, nationality, or immigration status of applicants seeking benefits.

(5) If a benefit provider offers a number of services, only some of which are exempt from verification as a result of this Order, the benefit provider may conduct verification of the non-exempt programs or services as specified in the applicable portions of the ''Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' 62 FR 61,344 (1997) or may be required to conduct verification as specified by any subsequent or superseding regulations.

(6) To the extent that it can be accomplished without undue administrative hardship, benefit providers should make every effort to provide information to all prospective benefit seekers about which benefits they qualify for and which benefits involve citizenship or immigration verification requirements.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services, or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification, and nothing herein should be so construed.

2. The government-funded programs, services, or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; do not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources, as discussed in paragraph 3, below; and serve purposes of the type described in paragraph 4, below, for the protection of life or safety. Specified programs must satisfy all three prongs of this test.

3. The community-based programs, services, or assistance specified in paragraphs 2 and 4 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services, or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 4 below, are not within this specification if they condition on the individual recipient's income or resources:

(a) the provision of assistance;

(b) the amount of assistance provided; or

(c) the cost of the assistance provided on the individual recipient's income or resources.

4. Included within the specified programs, services, or assistance determined to be necessary for the protection of life or safety are:

(a) Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;

(c) Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

Dated: January 5, 2001.

Janet Reno,

Attorney General.

[FR Doc. 01–1158 Filed 1–12–01; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2093–00]

Establishing an Immigration and Naturalization Service Data Management Improvement Act Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice establishing a Task Force.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and Public Law 106–215, the Attorney General is establishing an Immigration and Naturalization Service Data Management Improvement Act Task Force. This notice advises Federal, State, and local agencies, and private sector representatives that the Immigration and Naturalization Service (Service) is soliciting members from interested groups, associations, or individuals who may wish to serve on the Task Force.

Purpose of Task Force

The Task Force will evaluate and make recommendations on:

(1) How the Attorney General, in consultation with the Secretaries of State, Treasury, and Commerce can efficiently and effectively implement an integrated entry and exit data system;

(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports-of-entry through—

(a) Enhancing systems for data collection and data sharing, including the integrated entry and exit data system, by better use of technology, resources, and personnel;

(b) Increasing cooperation between the public and private sectors;

(c) Increasing cooperation among Federal agencies and among Federal and State agencies; and

(d) Modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures at airports, seaports, and land border ports-of-entry; and

(3) The cost of implementing each of the Task Force's recommendations.

Further, no later than December 31, 2002 and no later than December 31 of each subsequent year the Task Force is in existence, the Attorney General shall submit a report to Congress containing the findings, conclusions, and recommendations of the Task Force.

Composition of Task Force

The Task Force shall be composed of 17 members, including the Attorney General, private sector representatives of affected industries and groups, and representatives from Federal, State, and local agencies, who have an interest in: immigration and naturalization; travel and tourism; transportation; trade; law enforcement; national security; or the environment. Participation on the Task Force will not be remunerated, however, travel and associated expenses may be reimbursed or borne by the Government.

Qualification of Task Force members

Groups, associations, or individuals who wish to be considered for inclusion on this Task Force should have a background that reflects a good working knowledge of entry and exit procedures and business practices. Ideally, this knowledge should include all of the environments where inspections take place (*i.e.,* airports, northern and southern land borders ports, and seaports).

Additionally, it would be helpful for interested groups, associations, or individuals to understand modern data collection and matching processes in an automated environment and how the requirements of Public Law 106–215 can be best met given the business practices of ports-of-entry, and the competing goals of enforcing the Immigration and Nationality Act and facilitating the movement of travelers. For more information concerning the Task Force, see Public Law 106–215 on the Service's website at http://www.ins.usdoj.gov.

In considering what groups, associations, or individuals should serve on the Task Force, the Service will make every effort to balance both geographical interests to ensure the unique characteristics of each type of port-of-entry are considered and the needs of various industries that depend on the efficient operation of ports-of-entry.

Federal Advisory Committee Act

The Task Force will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act (FACA). Its charter will be filed in accordance with the provisions of that FACA.

Solicitation of Public Opinion Regarding Task Force Membership

The Department of Justice is seeking input from groups, associations or individuals to determine the optimal Task Force composition. Please send suggestions and a brief background or justification to the Immigration and Naturalization Service, Office of Inspections, 425 I Street, NW, Room 4064, Washington, DC 20536, Attn: Jennifer Sava. Please include a daytime phone number where a point of contact can be reached as well as an e-mail address, if available. Please submit information by February 16, 2001.

Once a group, association, or individual has been selected to serve on the Task Force, the Service will notify the point of contact and will provide further instruction.

Who Can Be Contacted If There Are Questions Concerning This Task Force?

For questions concerning this Task Force, please contact Jennifer Sava, Office of Inspections, Immigration and Naturalization Service, 425 I Street, NW, Room 4064, Washington, DC 20536; telephone (202) 514–3019.

Dated: January 3, 2001.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–1202 Filed 1–12–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Policy-Driven Responses to Parole Violations

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 01 for a cooperative agreement to assist up to six paroling authorities through the ''Policy-Driven Responses to Parole Violations'' project. State releasing authorities have the legal responsibility for paroled, conditional released and some mandatory released offenders. Often times the actions taken by releasing authorities in their response to violations leads to revocation proceeding, which contributes to prison crowding. It is intended that through this solicitation paroling authorities will have an opportunity to develop policy guided responses in confronting violations. This is not an announcement for applicants to receive technical assistance. The purpose of this announcement is to select an awardee who will, in conjunction with the National Institute of Corrections, select the six paroling authorities, and plan and coordinate the work.

Background

The response to violations by offenders who are serving the remaining portion of their sentence in the community and under the control of a releasing authority has become a major correctional issue. Over all, commitment rates to prison for new offenses has leveled off or are declining, while at the same time prison populations continue to increase. Much of this increase has been the results of parole and probations violators coming to prison as the results of having their supervision period revoke by either a judge or a parole board. There appears to be a high reliance on incarceration or re-incarceration by decision makers in responding to the behaviors of the offender. There have been a variety of studies which seem to indicate that the appropriateness in responding to violations committed by the offender have a greater likelihood of success if the response is directly related the risk/need of that offender and incarceration in many instances may be the least effective response. Although, a complete analysis has not been done, the idea of equity, fairness and consistency in the revocation process should be explored to determine how and why and under what conditions certain decisions are made.

Project Objectives

This project will provide technical assistance to up to six paroling authorities that are committed to improving the effectiveness and efficiency of the way they respond to offenders who violate rules and/or conditions of parole, this includes both discretionary and mandatory release supervision. The project may also include enhancing policies governing rescission practices. (the cancellation of a presumptive release date) The intent of this project is to take into consideration the following:

1. The thorough analysis of current practice to determine the quantity and quality of data required/available for decision making information and the level of commitment of decision makers to use it.

2. Insure key decision makers are aware/knowledgeable of research evidence based on criminogenic need.

3. Provide key decision makers with information regarding program level/options for sanctioning/intervening in violation behavior based on assessed risk and responding to criminogenic need.

4. Forge/initiate working relationship with other criminal justice practitioners involved in the revocation process to attain common policy.

5. Articulate written policy on violation and revocation practices that the Board will consistently enforce/carry out with the assistance of other key community justice practitioners.

6. Implement data gathering regarding policy decisions.

Scope of Work

The response to violations involves the exercise of discretion by individuals from several organizations, and seldom

has this complicated process been analyzed by individual states to fully understand its impact. The receipt must have the ability to work individually and jointly with parole boards, agency administrators, supervision staff, and treatment and service providers, in order to effectively manage policy development teams. The intent is that the recipient of this award will take into consideration the research and the practical knowledge of responding to violations, and from that knowledge base, assist states to develop policy driven practices for organizations to follow. The resulting effect should allow for a more rational utilization of prison space, staff allocation (both in the field and correctional facilities) and create a meaningful return on the investment the state makes in corrections.

The recipient of this cooperative agreement must prepare a proposal that describes their plan to meet the goals/objective which should include a schedule identifying benchmarks of significant tasks in chart form. Applicants must identify their key project staff and the relevant expertise of each. Also, the application should indicate how it will work with NIC on an announcement for marketing this project; develop selection criteria; and compile information on applicants making application. The proposal should present a methodology or approach that the applicant proposes to employ in providing technical assistance to 6 paroling authorities that would incorporate the following and other elements deemed appropriate to accomplishing the objectives of the project:

- The process for taking decision makers through analysis of past practices for parole violations including what data, information and decision making policies and practices should be identified, collected and analyzed.
- Develop descriptions of acceptable responses to a range of violation behaviors and identify the various sanctions and interventions strategies to consider.
- Develop future outcome or performance measures for a policy-driven parole violation process.
- Determine which dynamic screening, classification and assessment system(s) may contribute to improved violation decision-making and how and when such systems should be used.
- Develop a plan to design, implement and operate interventions consistent with the principles of effective interventions aimed at reducing risk by confronting parole violators criminogenic needs.

Authority: Public Law 93–415.

Funds Available: This is a cooperative agreement. A cooperative agreement is a form of assistance relationship through which the National Institute of Corrections is involved during the performance of the award. The award is made to an organization who, in concert with the Institute, will solicit and select participating jurisdictions and provide them with technical assistance. No funds are transferred to state or local government. The Community Corrections Division will provide the financial assistance in the form of a cooperative agreement to an agency or organization, who makes application. This initiative emphasizes policy development by paroling authorities in partnership with supervision staff and service delivery organizations. The award will be limited to $250,000 (direct and indirect cost) and project activity must be completed within 18 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Community Correction Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Thursday, February 28, 2001. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106 extension 0 for pickup.

Addresses and Further Information: Request for application kit, which includes application forms and a copy of this announcement, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159 or 202–307–3106, ext. 159, or email: *jevens@bop.gov.* A copy of this announcement and application forms may also be obtained through the NIC web site: http//www.nicic.org (click on ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Cranston J. Mitchell, Corrections Program Specialist at 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 153 or 202–307–3106, ext. 153, or by email: *cjmitchell@bop.gov.*

Eligibility Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member review process.

Number of Awards: One (1).

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one state.

NIC Application Number: 01C06 This number should appear as a reference line in your cover letter and also in box 11 of Standard form 424.

Catalog of Federal Domestic Assistance Number: 16.603

Dated: January 9, 2001.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 01–1209 Filed 1–12–01; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADINISTRATION

[Notice 01–004]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CJAB Associates, LLP, of Houston, TX, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent No. 5,153,132, entitled ''Three-Dimensional Co-Culture Process;'' U.S. Patent No. 5,153,133, entitled ''Method for Culturing Mammalian Cells in a Horizontally Rotated Bioreactor;'' U.S. Patent No. 5,155,034, entitled ''Three-Dimensional Cell to Tissue Assembly Process;'' U.S. Patent No. 5,155,035, entitled ''Method for Culturing Mammalian Cells in a Perfused Bioreactor;'' U.S. Patent No. 5,308,764, entitled ''Multi-Cellular Three Dimensional Living Mammalian Tissue;'' U.S. Patent No. 5,496,722, entitled ''Method for Producing Non-Neoplastic, 3–Dimensional Mammalian Tissue and Cell Aggregates under

Microgravity Culture Conditions and the Products Produced Thereby;'' U.S. Patent No. 5,627,021, entitled''Multi-Cellular, Three-Dimensional Living Mammalian Tissue;'' U.S.Patent No. 5,846,807, entitled ''Media Compositions for Three-Dimensional Mammalian Tissue Growth Under Microgravity Culture Conditions;'' U.S. Patent No. 5,858,783, entitled ''Production of Normal Mammalian Organ Culture Using a Medium Containing Mem-Alpha, Leibovitz L–15, Glucose Galactose Fructose;'' U.S. Patent No. 5,851,816, entitled ''Cultured High-Fidelity Three Dimensional Human Urogenital Tract Carcinomas and Process;'' and U.S. Patent No. 6,117,674, entitled ''Horizontal Rotating-Wall Vessel Propagation in Vitro Human Tissue Models.'' Each of the above U.S. Patents is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by March 19, 2001.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: January 9, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1125 Filed 1–12–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting of the National Museum Services Board.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Government through the Federal Advisory Committee Act (5 U.S.C. App.) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9 am–12 pm on Friday, January 26, 2001.

STATUS: Open.

ADDRESS: Room M–07, The Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC 20004, (202) 606–4649.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, January 26, 2001 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda; 80th Meeting of the National Museum Services Board in Room M–07 at The Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC 20004, on Friday, January 26, 2001

9 am–12 pm

I. Chairman's Welcome
II. Approval of Minutes
III. Director's Report
IV. Staff Reports:
Office of Management and Budget
Office of Public and Legislative Affairs
Office of Technology and Research: The Role of the Technology Officer; Barbara Smith
Office of Museum Services
Office of Library Services
V. Old Business
- Report from the 21st Century Learner Steering Committee
- Review and Approval of Conservation Action Plan

VI. New Business
- IMLS and the New Congress: Special Guest
- Reauthorization Update: Review of the Legislation
- General Operating Support Grants: Analysis and Discussion

Dated: January 9, 2001.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 01–1356 Filed 1–11–01; 2:11 pm]

BILLING CODE 7063–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Nuclear Management Company, LLC (the licensee) to withdraw its October 5, 1999, application for proposed amendment to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Units 1 and 2, located in Town of Two Creeks, Manitowoc County, Wisconsin.

The proposed amendment would have revised the Technical Specifications (TSs) to eliminate inconsistencies, principally related to decay heat removal. The amendment is no longer necessary because the inconsistencies are being corrected as part of a separate application dated November 15, 1999, to convert Point Beach's current TSs to improved TSs. The November 15, 1999, application is currently being reviewed by the staff of the Commission.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 17, 1999 (64 FR 62717). However, by letter dated December 19, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 5, 1999, as supplemented May 19, 2000, and the licensee's letter dated December 19, 2000, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 5th day of January 2001.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–1174 Filed 1–12–01; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[NRC License No. 29–30458–01]

SteriGenics International, Somerset, NJ: Exemption From 10 CFR 36.23(a); Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: SteriGenics International, Somerset, NJ: Exemption from 10 CFR 36.23(a); Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering authorizing SteriGenics International, Inc. (SteriGenics or the licensee) an exemption to use a cell door which prevents an individual in the radiation room from leaving.

SUPPLEMENTARY INFORMATION:

Proposed Action

SteriGenics is licensed by the NRC to irradiate materials, except explosives, flammables, and corrosives using cobalt-60 in a panoramic wet-source-storage irradiator. The licensee requested, in a letter dated September 26, 2000, that the NRC grant an exemption from 10 CFR 36.23(a) to use a cell door which prevents an individual in the radiation room from leaving. SteriGenics has been conducting irradiations using this cell door since the license was issued on February 1, 1999. The NRC staff has determined during an inspection of the facility, that the cell door does not meet 10 CFR 36.23(a) which requires that doors and barriers not prevent an individual in the radiation room from leaving.

Need for the Proposed Action

Part 36 irradiators use high activity sealed sources of radioactive material in a facility constructed so that the sealed sources and material being irradiated are contained in a shielded volume (radiation room). In many units, sources are stored under water (wet-source-storage). Irradiator facilities typically incorporate the use of a shielded ''maze'' which allows an individual to move to a shielded area within the radiation room and a door to the radiation room which allows an individual to exit the radiation room at any time.

The exemption is needed so that SteriGenics can carry out its business of irradiating materials in this irradiator. The door to the radiation room of this irradiator serves as an integral part of the shielding and must be closed prior to exposing the radioactive sources to conduct an irradiation. The design of the irradiator control system does not allow the radioactive sources to be raised unless the door is closed. Once closed, an individual located in the radiation room cannot open the door and, therefore, is unable to leave the radiation room as required by 10 CFR 36.23(a). An individual in the radiation room with the door closed can prevent the sources from rising by pulling a cord on the room wall and thereby prevent radiation exposure.

SteriGenics has proposed modifications which provide a level of safety equivalent to that which is provided by compliance with 10 CFR 36.23(a). Currently, there are two pull cords inside the radiation room. One runs the length of two of the room walls, the second the length of the third. The fourth wall is covered by equipment. The presence of equipment in the radiation room forces individuals in the radiation room to be near one of these cords. Both of these cords must be actuated as part of the irradiator startup sequence. This actuation assures that the cords are functional and that the operator has searched the cell prior to beginning an irradiation. Once the startup sequence has been completed, the pull cords change function and pulling either cord will prevent the sources from rising or cause them to return to the shielded position if they have begun to rise. SteriGenics proposes to modify the irradiator control circuit logic so that if an individual pulls one of these cords twice, in addition to the sources returning to the shielded position, the cell door will open after a short delay. The control system logic will assure that the door does not open until and unless the sources are in the fully ''down'' position and radiation levels in the room are normal. The delay is caused by the operation of this logic and the fact that it takes between 15 and 30 seconds for the door to open.

SteriGenics will also relocate the ''set-up'' key switch to the far corner inside the radiation room. Currently, this switch is located outside the cell door. Inserting the key and turning this switch begins the sequence which eventually allows moving the sources. Within 90 seconds of turning the switch, the operator must search the radiation room, pull each cord once, exit the room and close the shield door. The operator must then place the key in the control console and may then move the sources. Placing the switch in the room forces the operator to bring the key which is used to move the sources (as required by 10 CFR 36.31(a)) into the radiation room during the ''set-up'' process. This increases the assurance that this requirement will be met by substituting an active control for the current administrative control (the operator is required by existing procedure to take the key into the room). Taking the key into the room during ''setup'' assures that no one other than that operator can move the sources.

Environmental Impacts of the Proposed Action

No radioactive material is released into the environment, all of the radioactive material is wholly contained within the shielded irradiator and there will be no changes to radiation dose rates outside the irradiator. The radiation dose rate outside this irradiator meets regulatory requirements and is similar to the dose rate outside traditional panoramic wet-source-storage irradiators which meet the requirement in 36.23(a). Therefore, the modification will not result in any significant environmental impacts.

Alternatives to the Final Action

As required by Section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), the staff has considered alternatives to the final action including denying the exemption or requiring that SteriGenics comply with 10 CFR 36.23(a). These options were not adopted because they would provide no gain in protection of the human environment and they would be significantly detrimental to SteriGenics. Denying the exemption request would result in SteriGenics ceasing all irradiations and either redesigning and substantially modifying the physical facility or disposing of the radioactive sources and decommissioning the facility. In order for SteriGenics to comply with 10 CFR 36.23(a) they need to extensively modify the existing irradiator to incorporate a shield maze. This would be expensive and would prevent the use of the existing conveyor system, requiring additional expenditures for modifications.

Alternative Use of Resources

Alternative use of resources was considered as stated above.

Agencies and Persons Consulted

Agencies or persons outside the U.S. Nuclear Regulatory Commission were not consulted because there will be no significant impact on the environment from the proposed activity.

Identification of Sources Used

Letters from SteriGenics to the U.S. Nuclear Regulatory Commission, Region I, dated:

1. January 5, 2000 (ML003676755)
2. February 4, 2000 (ML003684178)
3. September 26, 2000 (ML003754079)

Finding of No Significant Impact

Based on the above EA, the Commission has concluded that environmental impacts that would be created by the proposed action would not have a significant effect on the quality of the human environment and a Finding of No Significant Impact is appropriate. Accordingly, the preparation of an Environmental Impact Statement is not warranted.

Documents

Documents submitted by SteriGenics are available for public inspection from the Publicly Available Records (PARS) component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at http://www.nrc.gov/NRC/ADAMS/index.html (the Public Electronic Reading Room). Assistance with the Public Electronic Reading Room may be obtained by calling (800) 397–4209. The accession numbers for the licensee's documents referred to in this Assessment are listed next to the document date above.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this action may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (SteriGenics International, 210 Clyde Road, Somerset, NJ 08873); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR part 2, subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (*i.e.,* health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at King of Prussia, Pennsylvania, this 4th day of January 2001.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety Region I.

[FR Doc. 01–1173 Filed 1–12–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641, License No. 42–23539–01AF Department of the Air Force; Docket No. 030–29462, License No. 45–23645–01NA, Department of the Navy; Docket No. 040–08767, License No. SUC–1380, Department of the Army]

Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a director's decision with regard to a petition dated June 1, 2000, filed by Doug Rokke, Ph.D., hereinafter referred to as the ''petitioner.'' The petition concerns the use of depleted uranium (DU) by the U.S. Department of Defense and all services.

The petition requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) hold a hearing to consider ''the revocation of the master DU [depleted uranium] license for the U.S. Department of Defense and all services, implementation of substantial fines and consideration of personal criminal liability.'' As the basis for this request, the petitioner stated that ''the continuing deliberate use of DU munitions during battle and during peacetime is resulting in serious health and environmental consequences.''

By letter dated September 8, 2000, and addressed to the petitioner, the NRC staff acknowledged receiving the petition, and stated that pursuant to 10 CFR 2.206 the petition was referred to the Office of Nuclear Material Safety and Safeguards for action, and that it would be acted upon within a reasonable time.

The NRC staff requested the U.S. Department of the Air Force, the U.S. Department of the Army, and the U.S. Department of the Navy to respond to the petition. The licensees responded on October 30, 2000, and the information provided was considered by the staff in its evaluation of the petition.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the request to hold a hearing to consider the revocation of the military licenses authorizing the use of DU, implementation of substantial fines, and consideration of personal criminal liability, should be denied. The reasons for this decision are explained in the director's decision pursuant to 10 CFR 2.206 [DD–01–01], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (*http://www.nrc.gov*) on the World Wide Web, under the ''Public Involvement'' icon.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 9th day of January 2001.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–1175 Filed 1–12–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bitwise Designs, Inc., Common Stock, $.001 Par Value) File No. 0–20190

January 9, 2001.

Bitwise Designs, Inc., a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Company's Security has been approved for quotation on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq National Market''). Trading in the Security on the Nasdaq National Market began in April 2000. As a result, the Company has determined to withdraw its Security from listing and registration on the PCX in the belief there are no additional benefits to either the Company or its shareholders in maintaining such listing. In effecting such withdrawal, the Company will avoid the direct and indirect costs incurred in maintaining the PCX listing.

The Company has stated in its application that it has complied with the rules of the PCX governing the withdrawal of an issue from listing and registration and that the PCX has in turn indicated that it will not oppose such withdrawal. The Company's application relates solely to the withdrawal of the Security from listing on the PCX and registration under section 12(b) of the Act[3] and shall have no effect upon the Security's continuing quotation on the Nasdaq National Market or on its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 31, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1190 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of application To Withdraw From Listing and Registration; (Signal Technology Corporation, Common Stock, $.01 Par Value) File No. 1–13282

January 9, 2001.

Signal Technology Corporation, a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company's Security has been approved for quotation on the national Market of the Nasdaq Stock Market, Inc. (''Nasdaq National Market''). Trading in the Security on the Nasdaq National Market commenced at the opening of business on Friday, April 7, 2000, and was simultaneously suspended on the Amex. The Company made the decision to transfer the trading of its Security from the Amex to the Nasdaq National Market based on its evaluation of the comparative marketing advantages available to companies quoted through the dealer network of the Nasdaq National Market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of an issue from listing and registration. The Company's application relates solely to the withdrawal of the Security from listing on the Amex and registration under section 12(b) of the Act[3] and shall have no effect upon the Security's continuing quotation on the Nasdaq National Market or on its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before January 31, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1189 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24821; 812–12388]

Nicholas-Applegate Fund, Inc., et al.; Notice of Application

January 9, 2001.

AGENCY: Securities and Exchange Commission (''SEC''or the ''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: The order would exempt the applicants from section 15(f)(1)(A) of he Act in connection with the proposed change in control of Nicholas-Applegate Capital Management (''NACM''). Without the requested exemption, Nicholas-Applegate Fund, Inc. (the ''Company'') would have to reconstitute its board of directors (the ''Board'') to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for NACM to rely upon the safe harbor provisions of section 15(f).

Applicants: The Company and NACM.

FILING DATE: The application was filed on January 8, 2001.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 31, 2001, and should be accompanied by proof of service on applicants, in the from of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

[5] 17 CFR 200.30–3(a)(1).

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Nicholas-Applegate Capital Management, 600 West Broadway, San Diego, CA 92101; Nicholas-Applegate Fund, Inc., 100 Mulberry Street, Newark, NJ 07102.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegal, Senior Counsel, at (202) 942–0567, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Company is registered under the Act as an open-end management investment company, NACM, a California limited partnership, serves as the subadviser to the Company pursuant to a subadvisory agreement among NACM, the Company, and Prudential Investments Fund Management LLC (the successor to Prudential Mutual Fund Management, Inc.) (''Prudential''). Prudential serves as the manager and administrator of the Company. Each of NACM and Prudential is registered as an investment adviser under the Investment Advisers Act of 1940.[1]

2. Nicholas-Applegate Capital Management Holdings LP (''NACM Holdings LP'') is the general partner of, and Nicholas-Applegate Capital Management Global Holding Co. LP (''Global Holding LP'') is the sole limited partner of NACM. Their combined partnership interests comprise 100% ownership of NACM.

3. Allianz of America, Inc. (''Allianz of America'') is a holding company that owns several insurance and financial service companies and is, in turn, a wholly owned subsidiary of Allianz AG. On October 17, 2000, NACM, NACM Holdings LP, Global Holding LP, and certain of their affiliates,[2] and Allianz of America and its wholly owned subsidiary, MacIntosh LLC, entered into a Merger Agreement under which Allianz of America agreed to acquire NACM (the ''Transaction''). As a result of the Transaction, NACM will become an indirect wholly owned subsidiary of Allianz of America and Allianz of America will control NACM and its affiliates. Applicants expect that the Transaction will be consummated in January, 2001.

4. Consummation of the Transaction will result in a change of control of NACM within the meaning of section 2(a)(9) of the Act and, consequently, will result in an assignment of the current subadvisory agreement among NACM, the Company, and Prudential within the meaning of section 2(a)(4) of the Act. As required by section 15(a)(4) of the Act, the subadvisory agreement will automatically terminate in accordance with the terms of the agreement. In connection with the Transaction, NACM has determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This conditions provides that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B) of the Act defines an ''interested person'' of an investment adviser to include, among others, any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of the broker or dealer. Rule 2a19–1 of the Act provides an exemption from the definition of interested person for directors who are registered as brokers or dealers, or who are affiliated persons of registered brokers or dealers, provided certain conditions are met.[3]

2. Upon consummation of the Transaction, it is proposed that the Board will consist of seven directors, four of whom are not interested persons of NACM within the meaning of section 2(a)(19)(B) of the Act (''Disinterested Directors''), and three of whom may be considered interested persons of NACM (''Interested Directors''). Two of the Interested Directors may be considered interested persons of NACM within the meaning of section 2(a)(19)(B)(v) of the Act by virtue of their relationship to a registered broker-dealer. Applicants state that the exemption provided by rule 2a19–1 will not be available with respect to these two Interested Directors because the broker-dealers with which they are affiliated may engage in transactions with other members of the Company's complex.[4] The remaining interested Director is the managing partner of NACM and thus, is an interested person of NACM. With the exception of this director, upon consummation of the Transaction, none of the members of the Board will be affiliated persons within the meaning of section 2(a)(3) of the Act of any party to the Transaction.

3. Without the requested exemption, the Company would have to reconstitute its Board to meet the 75 percent non-interested director requirement of section 15(f)(1)(A).[5] Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the

[1] Applicants state that each of Prudential and NACM is acting as an ''investment adviser'' within the meaning of section 2(a)(20) of the Act under a contract subject to section 15 of the Act.

[2] These affiliates are Nicholas-Applegate LLC, Nicholas-Applegate Securities and Nicholas-Applegate Securities International LDC.

[3] The rule generally provides that the exemption is available only if: (a) The broker or dealer does not execute any portfolio transactions for, engage in principal transactions with, or distribute shares for, the investment company complex, as defined in the rule, (b) the investment company's board determines that the investment company will not be adversely affected if the broker or dealer does not effect the portfolio or principal transactions or distribute shares of the investment company, and (c) no more than a minority of the investment company's directors are registered brokers or dealers of affiliated persons thereof.

[4] With respect to one of these Interested Directors, applicants state that the exemption provided by the rule is also unavailable because the broker-dealer with which the Interested Director is affiliated acts as distributor for the Company. Applicants further state that the same Interested Director is treated as an interested person of NACM in keeping with section 2(a)(19)(B)(vi) of the Act, although the Company has not received a Commission order. Section 2(s)(19)(B)(vi) of the Act includes within the definition of interested person any individual whom the Commission by order has determined to be an interested person because of a material business or professional relationship with the investment adviser or principal underwriter of an investment company, or with any principal executive officer or controlling person of such entity.

[5] The Company filed a definitive proxy statement with the Commission on December 27, 2000 (the ''Proxy Statement''). One of the proposals in the Proxy Statement solicits shareholder votes on the re-election of the seven directors who serve on the Board and the election of two additional Disinterested Directors. In the event exemptive relief has not been obtained by the earlier of February 28, 2001 or the time the Transaction closes, one of the Board's Interested Directors would resign and the election of the two additional Disinterested Directors would become effective. Thus, the total number of directors on the Board would be eight and the ratio of Interested Directors to total directors would be 2:8 (25). The Company would then be compliant with section 15(f)(1)(A).

purposes fairly intended by the policy and provisions of the Act.

4. applicants request an exemption under section 6(c) from section 15(f)(1)(A). Applicants submit that the reconstitution of the Board as contemplated by the Proxy Statement would serve no public interest and, in fact, would not be in the best interests of the shareholders of the Company. Applicants state that the resignation of the Interested Director would deprive the Company of a director who has important experience with the Company and its service providers and also has important macro-economic insights and perspective. Applicants also state that the addition of the two new Disinterested Directors would entail the additional expenses of directors' fees and potentially increased insurance and fidelity bond premiums, and the real, if intangible, costs of integrating two new board members into the decisional and operational affairs of the Company.

5. Applicants state that although directors who are affiliated persons of broker-dealers may be viewed as interested persons of NACM, these directors, and the broker-dealers with which they are affiliated are not affiliated persons of any party to the Transaction. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Company will continue to treat the Interested Directors as interested persons of the Company and NACM for all purposes other than section 15(f)(1)(A) of the Act so long as the directors are ''interested persons'' as defined in section 2(a)(19) of the Act and are not exempted from that definition by any applicable rules or orders of the SEC.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposi9tion of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser. Applicants assert that these circumstances do not exist in the present case.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to following condition:

If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Company, that director will be replaced by a director who is not an ''interested person'' of NACM within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time, after giving effect to the order granted pursuant to the application, are not interested persons of NACM for purposes of section 15(f) of the Act. This condition will not: (a) preclude replacement with or addition of a director who is an interested person of NACM solely by reason of being an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of NACM, or (b) require replacement of a director if a change in the director's circumstances causes him to become an interested person of NACM solely by reason of becoming an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of NACM.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1191 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43803; File No. SR–ISE–00–20]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Limitations on Orders

January 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule19b–4 thereunder,[2] notice is hereby given that on November 20, 2000, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 717 to adopt a rule prohibiting the entry of more than one order for the same beneficial account within a fifteen second period and to allow Electronic Access Members (''EAMs'') to enter orders on behalf of another member other than an order for an ISE market maker account. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

717. Limitations on Orders

* * * * *

(g) Orders for the Account of Another Member.

Absent an exemption from an Exchange official designated by the Board, Electronic Access Members shall not cause the entry of orders for [another Member] *the account of an ISE market maker that is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Exchange Act.*

(h) Multiple Orders for Same Beneficial Account.

Members shall not cause the entry of more than one order every fifteen (15) seconds for the account of the same beneficial owner in options on the same underlying security; provided, however that this shall not apply to multiple orders in different series of options on the same underlying security if such orders are part of a spread.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange market makers must be firm at their quotations for all orders, although they can set different sizes for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ISE filed its proposed rule change on November 20, 2000. On December 18, 2000, the ISE field Amendment No. 1 that entirely replaced the original rule filing.

customer and broker-dealer orders. When the sizes of a particular quote is exhausted, the Exchange's trading system automatically moves the quote to an inferior price according to parameters preset by the market maker. However, the system moves only the quotation in the options series in which there was a trade, leaving the market maker exposed to the risk that multiple orders may be executed nearly simultaneously in many series of the same option. This situation increases in ISE market maker's ''delta risk'' (the amount of underlying stock that would be necessary to hedge the options position), due to exposure across multiple series. This could result in ISE market makers providing more liquidity than may be available in the underlying stock.

The proposed rule change states that members shall not cause the entry of more than one order every fifteen seconds for the account of the same beneficial owner in options on the same underlying security. The Exchange represents that the proposed rule change is designed to reduce ISE market maker risk exposure by limiting the ability of a person to rapidly send in orders in the same series or multiple series of the same underlying security. The Exchange believes that fifteen seconds is sufficient to allow market makers to move quotations following an execution, while at the same time not unduly long as to place a burden on investors seeking execution on the Exchange.

The Exchange also proposes to amend paragraph (g) of ISE Rule 717, which currently prohibits an EAM from entering an order for any other member of the Exchange. The amendment will limit the scope of ISE Rule 717(g) to only prohibit EAMs from entering orders for ISE market maker accounts. The Exchange believes that this reflects the original intent of ISE Rule 717(g), which was to prevent market makers from entering orders through other members, thus disguising their trading in an attempt to avoid the requirements in ISE Rule 805 that they do a specified percentage of their volume in their assigned options classes. The proposed rule change recognizes that there are legitimate reasons why a member may enter orders on the Exchange through an EAM. These reasons vary. For example, some EAMs desire a temporary means of routing orders to the ISE until they are connected directly to the Exchange. In addition, a few members have clearing relationships with EAMs and therefore route orders through them. The ISE represents that in its experience to date, there is no regulatory reason why this type of order routing should be limited.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–00–20 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1152 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43815; File No. SR–NASD–00–81]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer to Computer Interface Fees For non-NASD Members

January 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2000, the National Association of Securities Dealers, Inc. (''NASD'') through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to change the manner in which fees are assessed on non-NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 26, 2000, Nasdaq filed Amendment No. 1 with the Commission. Amendment No. 1 noted that Nasdaq's Board of Directors approved the proposed rule change at its meeting on October 4, 2000, and the NASD Board of Governors reviewed the proposal at its meeting on October 5, 2000.

members who use a Computer-to-Computer Interface (''CTCI'') to access Nasdaq services. This new fee structure has been created to reflect Nasdaq's adoption of a new Transmission Control Protocol/Internet Protocol (''TCP/IP'') standard for CTCI linkages that will allow transmission of CTCI data using Nasdaq's Enterprise Wide Network II (''EWNII''). Proposed new language is underlined, proposed deletions are in brackets. Nasdaq intends to impose these fees on a rolling basis on non-members as they are converted to the new protocol and T1 or 56kb lines.[4] Proposed new language is in italics; proposed deletions are in brackets.

7000 Charges for Services and Equipment

7010. System Services

(a) through (e) No Change.

(f) Nasdaq Workstation ™ Service

(1) through (2) No Change.

(3) The following charges shall apply for each CTCT subscriber:

[Service Charge $200/month per CTCI circuit]

Options	*Price*
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	*$1275/month*
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy)	*$1600/month*
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb	*$8000/month*
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.)	*$975/month*
Bandwidth Enhancement Fee (for T1 subscribers only)	*$4000/month per 64kb increase above 128kb T1 base*
Installation fee	*$2000 per site for dual hubs and routers* *$1000 per site for single hub and router*
Relocation Fee (for the movement of TCP/IP—capable lines within a single location)	*$1700 per relocation*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 7010 to change the manner in which fees are assessed on NASD members who use a CTCI to access Nasdaq services. This new fee structure has been created to reflect Nasdaq's adoption of a new TCP/IP standard for CTCI linkages that will allow transmission of CTCI data using Nasdaq's EWNII. The CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's processing facilities in Trumbull, Connecticut. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq's ACES and Small Order Execution (''SOES'') systems. CTCI processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its current CTCI data transmission environment, Nasdaq has determined to sunset its existing CTCI X.25/bisysnch network.[5] This network currently operates using an X.25 transmission protocol over 19.2 kilo bits per second (''kb'') transmission lines. This X.25 system will be replaced by linking current CTCI subscribers to Nasdaq's faster and more reliable EWNII. EWNII

[4] Nasdaq has filed a separate proposal to impose these same fees on NASD members who interact with Nasdaq through a CTCI. *See* Securities Exchange Act Release No. 43821 (January 8, 2001).

[5] Given the age of the current CTCI X.25 network, Nasdaq also anticipates deficiency in obtaining sufficient hardware to meet future CTCI needs using the X.25 infrastructure.

operates over new more powerful 56kb and T1 data lines and transmits electronic information using the industry-standard TCP/IP transmission protocol. Once the transition to EWNII is completed, Nasdaq will terminate its current X.25/bisynch network. This upgrade will require all current X.25/19.2kb users to install either 56kb or T1 lines. Nasdaq believes that, in return, these lines will provide a minimum data transmission capability of almost three times that of the current 19kb-based interface. Moreover, running a TCP/IP protocol over these faster 56Kb and T1 lines will allow Nasdaq to provide CTCI subscribers with linkages that are more robust, customizable, and efficient in the use of available network bandwidth.

2. Statutory Basis

Nasdaq believes that the proposed rule changes are consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–81 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1150 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43821; File No. SR–NASD–80]

Self Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer to Computer Interface Fees for NASD Members

January 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2000, the National Association of Securities Dealers, Inc. (''NASD'') through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to change the manner in which fees are assessed on NASD members who use a Computer-to-Computer Interface (''CTCI'') to access Nasdaq services. This new fee structure has been created to reflect Nasdaq's adoption of a new Transmission Control Protocol/Internet Protocol (''TCP/IP'') standard for CTCI linkages that will allow transmission of CTCI data using Nasdaq's Enterprise Wide Network II (''EWNII''). Nasdaq intends to impose these fees on a rolling basis on members as they are converted to the new protocol and T1 or 56kb lines.[4] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7000 Charges for Services and Equipment

7010. System Services

(a) through (e) No Change.

(f) Nasdaq Workstation™ Service

(1) through (2) No Change.

(3) The following charges shall apply for each CTCT subscriber:

[Service Charge $200/month per CTCI circuit]

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 26, 2000, Nasdaq filed Amendment No. 1 with the Commission. Amendment No. 1 noted that Nasdaq's Board of Directors approved the proposed rule change at its meeting on October 4, 2000, and the NASD Board of Governors reviewed the proposal at its meeting on October 5, 2000.

[4] Nasdaq has filed a separate proposal to impose these same fees on non-members who interact with Nasdaq through a CTCI. *See* Securities Exchange Act Release No. 43815 (January 8, 2001).

Options	*Price*
Option 1: *Dual 56kb lines (one for redundancy) and single hub and router:*	*$1275/month*
Option 2: *Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).*	*$1600/month*
Option 3: *Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb*	*$8000/month*
Disaster Recovery Option: *Single 56kb line with single hub and router. (For remote disaster recovery sites only*	*$975/month*
Bandwidth Enhancement Fee (for T1 subscribers only)	*$4000/month per 64kb increase above 128kb T1 base.*
Installation Fee	*$2000 per site for dual hubs and routers* *$1000 per site for single hub and router*
Relocation Fee (for the movement of TCP/IP-capable lines within a single location)	*$1700 per relocation*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its fling with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 7010 to change the manner in which fees are assessed on NASD members who use a CTCI to access Nasdaq services. This new fee structure has been created to reflect Nasdaq's adoption of a new TCP/IP standard for CTCI linkages that will allow transmission of CTCI data using Nasdaq's EWNII. The CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's processing facilities in Trumbull, Connecticut. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq ACES and Small Order Execution (''SOES'') systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its current CTCI data transmission environment, Nasdaq has determined to sunset its existing CTCI X.25/bisynch network.[5] This network currently operates using an X.25 transmission protocol over 19.2 kilo bits per second (''kb'') transmission lines. This X.25 system will be replaced by linking current CTCI subscribers to Nasdaq's faster and more reliable EWNII. EWNII operates over new more powerful 56kb and T1 data lines and transmits electronic information using the industry-standard TCP/IP transmission protocol. Once the transition to EWNII is completed, Nasdaq will terminate its current X.25/bisynch network. This upgrade will require all current X.25/19.2kb users to install either 56kb or T1 lines. Nasdaq believes that, in return, these lines will provide a minimum data transmission capability of almost three times that of the current 19kb-based interface. Moreover, running a TCP/IP protocol over these faster 56Kb and T1 lines will allow Nasdaq to provide CTCI subscribers with linkages that are more robust, customizable, and efficient in the use of available network bandwidth.

2. Statutory Basis

Nasdaq believes that the proposed rule changes are inconsistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[6] and Rule 19b–4(f)(2) thereunder,[7] in that it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[5] Given the age of the current CTCI X.25 network, Nasdaq also anticipates difficulty in obtaining sufficient hardware to meet future CTCI needs using the X.25 infrastructure.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–80 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1151 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43813; File No. SR–NASD–00–75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Extend the Effectiveness of the Pilot Injunctive Relief Rule

January 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Dispute Resolution. On January 4, 2001, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change.[3] For the reasons discussed below, the Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 and to approve the proposal and Amendment No. 1 on an accelerated basis.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, dated January 3, 2001 (''Amendment No. 1'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10335 of the Code of Arbitration (''Code'') of the NASD, to extend the pilot injunctive relief rule for one year, pending Commission action on a pending rule filing, SR–NASD–00–02, to amend Rule 19335 and make it a permanent part of the code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed delections are in brackets.

10335. Injunctions

(i) Effective Date. This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This rule shall expire on [January 5, 2000] *January 4, 2002,* unless extended by the Association's Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD Dispute Resolution prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10335, the NASD's pilot injunctive relief rule, provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. The rule has primarily been used in ''raiding cases,'' or cases involving the transfer of an employee from one firm to another firm. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The SEC has periodically extended the initial pilot period in order to permit the NASD to assess the effectiveness of the rule. The pilot rule is currently due to expire on January 5, 2001.[4]

NASD Dispute Resolution believes that it is in the interest of members and associated persons that the effectiveness of the pilot rule remain uninterrupted pending final Commission action on SR–NASD–00–02. Therefore, NASD Dispute Resolution believes that the pilot rule should be extended to January 4, 2002, or such earlier time as permitted by Commission action on the permanent rule filing, which makes clear that, if approved, the amended rule would supersede the pilot rule in its entirety.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.[6] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

[4] On January 12, 2000, NASD Regulation, Inc. filed a proposed rule filing, SR–NASD–00–02 to amend rule 10335 and to make it a permanent part of the Code. *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) (File No. NASD–00–02). Simultaneously with this rule filing, the NASD Dispute Resolution has filed a response to Comments and Amendment No. 3 to SR–NASD–00–02.

[5] 15 U.S.C. 780*o*–(b)(6).

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

Street, NW., Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of the 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASA–00–75 and should be submitted by February 6, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Dispute Resolution has requested that the Commission find good cause pursuant to Section 19(b)(2)[7] for approving the proposed rule change and Amendment No. 1 prior to the 30th day after publication in the **Federal Register.** The Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.[8] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief, to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending Commission action on the rule filing proposing to amend Rule 10335 and make it a permanent part of the Code.[9] Amendment No. 1 makes several technical changes to the proposal and adds the statutory basis to the rule filing. The Commission believes, therefore, that granting accelerated approval of the proposed rule change, as amended, is consistent with Section 15A of the Act.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–00–75), as amended, is approved on an accelerated basis through January 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1155 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43814; File No. SR–NASD–00–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to EWN II Fees for NASD Members

January 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'', the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule to pass on costs associated with increasing the bandwidth of the Enterprise Wide Network II (''EWN II'') to NASD members for the period December 1–12, 2000. Nasdaq previously filed under Section 19(b)(3)(A)(ii) a proposed rule change to increase the fees beginning December 13, 2000, which was immediately effective upon filing.[3] Nasdaq also filed a parallel rule filing to effect amendments to the EWN II fee structure to apply to non-NASD members.[4] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(e) No Change

(f) Nasdaq Workstation Service

(1) No Change

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	$1.875/month per service delivery platform (''SDP'') from December [13] *1*, 2000 through February 28, 2001 $2,035/month per SDP beginning March 1, 2001
Display Charge	$525/month per presentation device (''PD'')
Additional Circuit/SDP Charge	$3,075/month from December [13] *1*, 2000 through February 28, 2001, and 3,225/month beginning March 1, 2001*

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (''API'') shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

* No change to footnotes

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78*o*-3.

[9] *See supra* note 4.

[10] 17 U.S.C. 78*o*-3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43769 (December 22, 2000), 66 FR 826 (January 4, 2001).

[4] Securities Exchange Act Release No. 43768 (December 22, 2000), 66 FR 824 (January 4, 2001).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the September/October 2000 issue of Nasdaq's *Subscriber Bulletin,*[5] Nasdaq announced that it had increased the bandwidth of its Enterprise Wide Network II from 128 kilobits (''kb'') to 192 kb. This increased bandwidth provides Nasdaq with the ability to support increased share volume and net products and trading applications that will be introduced. A description of the history of EWN II and the recent bandwidth increase may be found in SR–NASD–00–73.[6] *Subscriber Bulletin* also announced that the increased cost of the expanded bandwidth ($375 per month per circuit) would be passed on to Nasdaq subscribers beginning December 1, 2000. Nasdaq absorbed all of the increased costs for the month of November 2000.

On December 13, 2000, the Commission received Nasdaq's proposed rule change to amend the subscriber fees for NASD members as described above.[7] Because the filing was made under Section 19(b)(3)(A)(ii), which makes the rule change immediately effective upon filing with the Commission, the fee increase became effective as of December 13, 2000. In this filing, Nasdaq seeks to recover the costs associated with the expanded bandwidth for the period of December 1–12, 2000, as announced in the *Subscriber Bulletin.*

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operate or controls. Nasdaq provided its subscribers with ample advance notice of the fee increase, and has limited the fee increase to the additional cost that it is incurring as a result of the expanded bandwidth. Nasdaq did not pass on the costs of the expanded bandwidth to subscribers that Nasdaq incurred in November 2000. As such, Nasdaq believes that it is equitably allocating charges among members for the use of EWN II during the period of December 1–12, 2000.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that it is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that maybe withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–79 and should be submitted by February 6, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margarety H. McFarland,

Deputy Secretary.

[FR Doc. 01–1195 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

[5] *Subscriber Bulletins* are mailed to Nasdaq Workstation II subscribers and also may be found at www.nasdaqtrader.com/trader/news/subscriberbulletins.

[6] Securities Exchange Act Release No. 43769 (December 22, 2000).

[7] *Id.*

[8] 15 U.S.C. 78o–3(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43811; File No. SR–00–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Modifying its Options Trade-Related Transaction Charges and Changing its Firm Transaction Fee

January 5, 2001

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Rates and Charges to create a new fee category in the transactions portion of the ''PCX Options: Trade-Related Charges.'' The new fee category will be entitled ''Broker-Dealer.''[4] The PCX also seeks to change the fees charged for firm transactions.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed its proposed rule change on November 16, 2000. On December 15, 2000, however, the Exchange filed Amendment No. 1, which clarified that the proposed fee is comparable to the fee charged by the Philadelphia Stock Exchange, Inc. (''Phlx''). *See* Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Susie Cho, Attorney, Division of Market Regulation (''Division''), Commission (December 15, 2000).

[4] The term ''Broker-Dealer'' as used in this rule filing will include transactions in which a market maker is trading for a customer account, any trade for a joint back officer (''JBO'') account, all trades for a firms account, except trades in which the firm is trading with its own customer on contra side.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Rates and Charges to create a new fee category in the transactions portion of the ''PCX Options: Trade-Related Charges.'' The new fee category will be entitled ''Broker-Dealer.'' The PCX also seeks to change the fees charged for firm transactions.

Currently, the PCX Schedule of Rates and Charges contains tow categorized of transactions under its options trade related charges. These categories include market maker transactions and firm transactions. The market maker charge is $0.21 per contract. The firm charge consists of $0.85 per contract side where the premium is less than $1.00 per contract and a $0.115 per contract side where the premium is $1.00 or more per contract. This fee structure does not address those instances where a broker/dealer processes a transaction through a customer account of the market maker or through a firm account created through a JBO arrangement with a clearing firm. In these situations the broker/dealer pays no transaction fees (customer account) or pays the applicable firm fee.

The Exchange now proposes to modify its Schedule of Rates and Charges. First, the Exchange proposes to change its options trade-related transaction charges by creating a new category entitled ''Broker-Dealer.'' The PCX believes that this modification is needed in order to create a billing category for broker-dealer activity that does not fall within the structure of the Schedule of Rates and Charges. This new category will cover transaction and comparison charges incurred by broker-dealer activity originating both on and off the PCX floor. This new fee consists of $0.19 per contract transaction charge and $0.05 per contract comparison charge. The fee will apply to broker-dealers who are routing orders through firm or customer accounts carried by member clearing firms. The broker-dealer fee does not apply to certain firm/proprietary orders that are included within the firm transaction charge.

The PCX believes that the propsed fee isreasonable. The Exchange alsorepresents that it is comparable to fees charged by the Phlx.[5] Like the broker-dealer charge applied by the Phlx, the PCX's proposed broker-dealer fee applies to ordersfor any account in which the holder of a beneficial interest is a broker-dealer or person associated with or employed by a broker-dealer, including JBO accounts.[6]

The Exchange also propooses tochange its firm transaction fee. The firm transaction fee applies to member firm proprietary trades that have a customer of that firm on the contra side of the transaction. The simplify billing, the Exchange proposes tochange the rate to a revenue neutral rate of $0.100 per contract regardless of premium size.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) thereunder,[10] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–00–38 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1153 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43823; File No. SF–PCX–99–48]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Miscellaneous House-Keeping Amendments to Options Trading Rules

January 9, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on October 11, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its rules on options trading by clarifying existing provisions, eliminating superfluous provisions, codifying current policies and procedures, and renumbering certain Option Floor Procedure Advices (''OPFAs''). The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In this filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made several technical changes to the proposed rule text to correct the numbering and lettering of certain sections of the rule text. *See* Letter to Heather L. Traeger, Attorney, Division of Market Regulation, SEC, from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, dated October 10, 2000 (''Amendment No. 1'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make several changes to the text of the PCX rules on options trading. First, the Exchange proposes to amend its rule 6.86[4] by providing a cross-reference to rule 6.37(f).[5] The Exchange proposes that, when rule 6.86 does not apply because an order is for a broker/dealer; a fast market has been declared; or rule 6.86 has been suspended, then rule 6.37(f) will apply. The Exchange proposes this rule change to protect investors and to emphasize the obligations of Market Makers on the Options Floor.

In addition, the Exchange proposes to define and clarify the terms ''executed'' and ''filled'' in rule 6.86, Commentary .09. Specifically, the Exchange proposes that an order is considered ''executed'' and ''filled'' at the price that was agreed upon when the trade was consummated, *i.e.,* when ''buy'' or ''sell'' was vocalized in response to a request for a market and disclosure was made of the price and the quantity of the order.

Second, the Exchange is proposing that rule 7.3(a)(6) references to subparagraphs (d) and (e) be changed to correctly reference subparagraphs (4) and (5).

Third, the Exchange proposes to renumber OFPA B–13, Subject: Evaluation of Options Trading Crowd Performance as rule 6.100. The Exchange proposes to renumber OFPA B–13 to centralize specific obligations, responsibilities and procedures of the Options Allocation Committee with respect to the evaluation of Lead Market Makers (''LMM'') and trading crowds. Specifically, the Exchange proposes to require that all procedures applicable to the Options Allocation Committee (''OAC'') for review of LMM or trading crowd performance pursuant to OFPA B–13 be renumbered and incorporated, verbatim, as rule 6.100.

Fourth, the Exchange proposes to eliminate the statement in rule 10.13(g) which states that ''[e]except as provided in rule 10.14 (Summary Sanction Procedures), the circumstances underlying the issuance of each floor citation shall be reviewed by a designated committee for a determination of whether the evidence is sufficient to find a violation of Exchange rules.'' The Exchange notes that this provision is inconsistent with rule 10.13(c), which provides, in part, that Exchange Regulatory Staff designated by the Exchange has the authority to impose a fine pursuant to rule 10.13.

Fifth, the Exchange proposes to adopt new rules 10.13(h)(13) and 10.13(k)(i)(13) to incorporate new rule 4.23 into the Minor Rule Plan and Recommend Fine Schedule.[6] Rule 4.23 states that a member or member organization must obtain Exchange approval in order to Exchange or maintain a telephonic or electronic communication between the Floor and another location, or between locations on the Floor. The proposed recommended fines, pursuant to proposed rule 10.13(k)(i)(13) of this rule are $250, $750 and $1,500 for first, second and third time violations, respectively.

Sixth, the Exchange proposes to adopt rule 10.13(h)(35) and 10.13(k)(i)(35) to incorporate new rule 6.35(d) into the Minor Rule Plan and Recommended Fine Schedule.[7] Rule 6.35(d) states that newly registered Market Makers have a grace period (60 days from the commencement of trading), during which time they may have, but are not required to have, a Primary Appointment Zone. At the completion of the grace period, the Market Maker must select a Primary Appointment Zone. Market Makers who fail to select a Primary Appointment Zone prior to the expiration of their grace periods will

[4] PCX rule 6.86 is the Exchange's ''firm quote'' rule for non-broker dealer customer orders.

[5] PCX rule 6.37(f), to be amended as follows in a pending PCX filing with the Commission states that: ''The following rule applies if rule 6.86 does not apply because an order is for a broker-dealer, a fast market has been declared or rule 6.86 has otherwise been suspended. Whenever a Floor Broker enters a trading crowd and calls for a market in any class and series at that post, each Market Maker present at the post where the option is traded is obligated, at a minimum, to make a market for one contract on each Market Maker's quoted price or 'implied' price (*e.g.,* if a Market Maker provides a bid but not an offer, the Market Maker's offering price will be implied by the bid price plus the maximum bid/ask spread differential specified in rule 6.37(b)(1)). In the event a Floor Broker is unable to satisfy an order from bids and offers given in the crowd, the Order Book Official may assign one contract to every Market Maker present within the trading crowd to assist the Floor Broker in satisfying the order. If a Market Maker at the post either bids lower or offers higher than the established market, such, Market Maker will be obligated to trade one contract at the price quoted by the Market Maker. If a Market Maker at the post fails to provide a bid or offer after having a reasonable opportunity to do so, the Market Maker will be obligated to trade one contract at the best price quoted in the crowd, or if there are no prices quoted, at the disseminated price.'' *See* Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (File No. SR–PCX–99–13).

[6] *See* Securities Exchange Act Release No. 40852 (December 28, 1998), 64 FR 1058 (January 7, 1999) (File No. SR–PCX–98–16).

[7] *See supra* note 5.

be subject to disciplinary action pursuant to rule 10.13. The proposed recommended fines, pursuant to proposed rule 10.13(k)(i)(35) of this rule are $500, $1000 and $1,500 for first, second and third time violations, respectively.

Seventh, the Exchange proposes to amend the text specifying the recommended fines for violations of the position limit rules pursuant to rule 10.13(k)(i)(21) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of $250.00 or $1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Eighth, the Exchange proposes to amend the text specifying the recommended fines for violations of the exercise limit rules pursuant to rule 10.13(k)(i)(22) of the Minor Rule Plan Recommended Fine Schedule. The Exchange proposes that position and exercise limit violations be the greater of $250.00 or $1 per contract over 5% of the applicable limit. The Exchange proposes this change so that it is obvious that the imposition of a monetary fine is recommended regardless of whether the applicable number of contracts is less than 5% over the designated position or exercise limit.

Ninth, the Exchange proposes to delete all references to OFPAs in rule 10.13(h) and (k), pertaining to the PCX Minor Rule Plan and to replace those references with the current rules. The Exchange proposes this change because it intends to renumber and incorporate all OFPAs pertaining to Options trading into the text of Rule 6.[8]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[9] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protest investors and the public interest. The proposal is also consistent with Section 6(b)(6),[10] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–48 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1192 Filed 1–12–01; 8:45 am]

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[8] *See* Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (File No. SR–PCX–99–13); Release No. 43293 (September 14, 2000) 65 FR 57416 (September 22, 2000) (File No. SR–PCX–99–36); Release No. 43025 (July 12, 2000), 65 FR 44559 (July 18, 2000) (File No. SR–PCX–99–40); Release No. 43149 (August 11, 2000), 65 FR 51392 (August 23, 2000) (File No. SR–PCX 99–44); and Release No. 42861 (May 30, 2000), 65 FR 36489 (June 8, 2000) (File No. SR–PCX–99–45).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43816; File No. SR–PCX–00–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures

January 8, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 28, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, has become effective on filing pursuant to section 19(b)(3)(A) of the Act[5] and rule 19b–4(f)(6) thereunder.[6] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (December 28, 2000) (''Amendment No. 1''). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

[4] *See* Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) (''Amendment No. 2''). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a rule requiring all members to adopt and implement a supervisory system and written supervisory procedures. Below is the text of the proposed rule change. Additions are *italicized* and deletions are in brackets.

Supervision

* * * * *

Rule 4.25(a). Adherence to Law

No member or member organization may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Exchange. Every member or member organization must supervise persons associated with the member or member organization so as to assure compliance therewith.

(b) *Supervisory System*

Each member or member organization for which the Exchange is the Designated Examining Authority (''DEA'') must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCX Rules. Final responsibility for proper supervision will rest with the member or member organization. The member's or member organization's supervisory system must provide, at a minimum, for the following:

(1) *The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.*

(2) *The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the member or member organization.*

(3) *The member or member organization must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.*

(4) *Each member or member organization must designate and specifically identify to the Exchange one or more persons who will be responsible for such supervision.*

(c) *Written Procedures*

Each member or member organization must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the PCX Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

There are some PCX and Pacific Exchange Equities, Inc., (''PCXE'') rules that relate to supervision of firm activity for those PCX member firms that conduct a public business. these include options rules such as, ''Office Supervision''[7] ''Account Supervision,''[8] ''Conduct on the Floor,''[9] and equities rules such as, ''Allied Persons & Approved Persons,''[10] ''Office Supervision,''[11] and ''Account Supervision.''[12] The Exchange, however, does not currently have a comprehensive rule that directly addresses the obligation of every member or member organization, whether conducting a public business or a proprietary business, to properly supervise its business and employees. The Exchange believes that the proposed rule clarifies (1) the responsibility of the member or member firm for the acts of its employees; and (2) the requirement that each member must supervise those persons for which it is responsible.

The proposed rule has three distinct parts. The first section of the proposed rule change is a prohibition on engaging in conduct that violates the federal securities laws, the Constitution or the Rules of the Exchange. This section also informs members that they must supervise all associated persons in order to assure compliance.

Section two of the proposed rule change sets forth the responsibility of all members or member organizations to establish and maintain a system to supervise the activities of its employees. The proposed rule states that this system must be reasonably designed to achieve compliance with the federal securities laws and PCX rules. The final responsibility for proper supervision rests with the member or member organization. The supervisory system must, at a minimum, provide (1) the designation of a person responsible for carrying out the firm's supervisory obligations; (2) a requirement that the member or member organization must undertake reasonable efforts to determine that all supervisory personnel are qualified, by virtue of experience and training, to carry out their obligations; and (3) a requirement that the member or member organization must identify to the Exchange the person(s) who will be responsible for such supervision.

Section three of the proposed rule change states that each member or member organization must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its employees. These procedures must be reasonably designed to achieve compliance with the federal securities laws and the PCX rules.

The Commission approved a similar rule filing by the National Association of Securities Dealers, Inc.[13] The Exchange believes that the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also help the Exchange to carry out its examination, compliance, and surveillance functions. Finally, the proposed rule change clarifies to member or member organizations supervisory obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by setting forth member supervisory obligations.

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[7] PCX Rule 9.1.

[8] PCX Rule 9.2(b).

[9] PCX Rule 6.2(b).

[10] PCXE Rule 2.14(d).

[11] PCXE Rule 9.1(c).

[12] PCXE Rule 9.1(d).

[13] *See* National association of Securities Dealers, Rule 3010.

[14] 15 U.S.C. 78f(b).

[15] U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[16] and rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–00–42 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1193 Filed 1–12–01; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43817; File No. SR–PCX–00–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Supervisory Procedures for Pacific Exchange Equities, Inc.

January 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 28, 2000, the Exchange filed an amendment to the proposed rule change.[3] On January 5, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (December 28, 2000) (''Amendment No. 1''). Amendment No. 1 corrected typographical errors that appeared in the proposed rule text.

[4] *See* Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission (January 5, 2001) (''Amendment No. 2''). Amendment No. 2 further corrected typographical errors that appeared in the proposed rule text.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a Pacific Exchange Equities, Inc. (''PCXE'') rule requiring all ETP Holders, Equity ASAP Holders and ETP Firms to adopt and implement a supervisory system and written supervisory procedures. Below is the text of the proposed rule change. Additions are *italicized*, and deletions are in brackets.

Supervision

* * * * *

Rule 6.17(a). Adherence to Law

No ETP Holder, Equity ASAP Holder or ETP Firms may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Corporation. Every ETP Holder, Equity ASAP Holder or ETP Firm must supervise persons associated with it so as to assure compliance therewith.

(b). Supervisory System

Each ETP Holder, Equity ASAP Holder or ETP Firm for which the Corporation is the Designated Examining Authority (''DEA'') must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCXE Rules. Final responsibility for proper supervision will rest with the ETP Holder, Equity ASAP Holder or ETP Firm. The ETP Holder's, Equity ASAP Holder's or ETP Firm's supervisory system must provide, at a minimum, for the following:

(1) *The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.*

(2) *The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the ETP Holder, Equity ASAP Holder or ETP Firm.*

(3) *The ETP Holder, Equity ASAP Holder or ETP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.*

(4) *Each ETP Holder, Equity ASAP Holder or ETP Firm must designate and specifically identify to the Corporation one or more persons who will be responsible for such supervision.*

(c). Written Procedures

Each ETP Holder, Equity ASAP Holder or ETP Firm must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the PCXE Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

There are some PCX and PCXE rules that relate to supervision of firm activity for those PCX member firms and PCXE ETP Holders, Equity ASAP Holders and ETP Firms that conduct a public business. These include options rules such as, ''Office Supervision,'' [7] ''Account Supervision,'' [8] ''Conduct on the Floor,'' [9] and equities rules such as, ''Allied Persons & Approved Persons,'' [10] ''Office Supervision,'' [11] and ''Account Supervision.'' [12] The Exchange, however, does not currently have a comprehensive rule that directly addresses the obligation of every member firm and ETP Holder, Equity ASAP Holder and ETP Firm, whether conducting a public business or a proprietary business, to properly supervise its business and employees. The proposed rule clarifies (1) the responsibility of the ETP Holders, Equity ASAP Holders and ETP Firms for the acts of its employees; and (2) the requirement that each ETP Holder, Equity ASAP Holder and ETP Firm must supervise those persons for which it is responsible.

The proposed rule has three distinct parts. The first section of the proposed rule change is a prohibition on engaging in conduct that violates the federal securities laws, the Constitution or the Rules of the Exchange and the PCXE. This section also informs ETP Holders, Equity ASAP Holders and ETP Firms that they must supervise all associated persons in order to assure compliance.

Section two of the proposed rule change sets forth the responsibility of all ETP Holders, Equity ASAP Holders and ETP Firms to establish and maintain a system to supervise the activities of their employees. The proposed rule states that this system must be reasonably designed to achieve compliance with the federal securities laws and PCXE rules. The final responsibility for proper supervision rests with the ETP Holder, Equity ASAP Holder and ETP Firm. The supervisory system must, at a minimum, provide (1) the designation of a person responsible for carrying out the firm's supervisory obligations; (2) a requirement that the ETP Holder, Equity ASAP Holder and ETP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified, by virtue of experience and training, to carry out their obligations; and (3) a requirement that the ETP Holder, Equity ASAP Holder and ETP Firm must identify to the PCXE the person(s) who will be responsible for such supervision.

Section three of the proposed rule change states that each ETP Holder, Equity ASAP Holder and ETP Firm must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its employees. These procedures must be reasonably designed to achieve compliance with the federal securities laws and the PCXE rules.

The Commission approved a similar rule filing by the National Association of Securities Dealers, Inc.[13] The Exchange believes that the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also aid the Exchange in carrying out its examination, compliance, and surveillance functions. Finally, the proposed rule change clarifies ETP Holder's, Equity ASAP Holder's and ETP Firm's supervisory obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by setting forth member supervisory obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

[7] PCX Rule 9.1.
[8] PCX Rule 9.2(b).
[9] PCX Rule 6.2(b).
[10] PCXE Rule 2.14(d).
[11] PCXE Rule 9.1(c).
[12] PCXE Rule 9.1(d).
[13] *See* National Association of Securities Dealers, Rule 3010.
[14] 15 U.S.C. 78f(b).
[15] 15 U.S.C. 78f(b)(5).
[16] 15 U.S.C. 78s(b)(3)(A).
[17] 17 CFR 240.19b–4(f)(6).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–00–43 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1194 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43812; File No. SR–Phlx–99–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

January 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Phlx filed an amendment to the proposal on December 28, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

a. The Original Filing

The Phlx proposes to amend its Certificate of Incorporation to add Article Nineteenth, relating to the leasing of memberships.[4] A complete copy of the text of Article Nineteenth is available at the Office of the Secretary, the Phlx, and at the Commission.

Proposed Article Nineteenth provides that, in addition to all other powers granted to the Board by law, the Certificate of Incorporation or otherwise, the Board shall have the power to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board such rules with respect to lease agreements, lessors and lessees as the Board may from time to time determine to be advisable. Such rules may include rules regulating and setting forth the rights and obligations of lessors and lessees, the required terms of lease agreements, and the fees, dues, and other charges required to be paid by lessors and lessees (or either of them) to the Exchange in connection with, and for the privilege of, leasing memberships. In addition, proposed Article Nineteenth provides that the Board shall have the power to adopt rules relating to the suspension or termination of any or all lease agreements with respect to memberships, to issue provisional trading privileges on such terms as the Board shall determine to members whose lease agreements are suspended or terminated, and to amend, alter, or repeal any or all of the Rules of the Board with respect to any of the foregoing matters.

b. Amendment No. 1

As a non-stock corporation organized under the Delaware General Corporation Law (''DGCL''), the Exchange represents that it has ample authority to adopt proposed Article Nineteenth. Because the Exchange's Certificate of Incorporation does not require member approval to adopt a charter amendment, proposed Article Nineteenth may be adopted by the Board of Governors without approval by the members of the Exchange (including lessees of memberships) or the owners of memberships (including lessors of memberships). 8 *Del. C.* § 242(b)93).[5] Therefore, the Exchange's Board adopted Article Nineteenth in accordance with Section 242.

Furthermore, Section 141(j) of the DGCL empowers the Board to direct the business and affairs of the Exchange, and the Exchange's by-laws give the Board broad power to adopt rules of the Exchange. 8 *Del. C.* § 141(j);[6] By-Law Art. IV, § 4–4. In addition, existing Article Third of the Phlx Certificate of Incorporation gives the Exchange authority to do all things necessary to run a national securities exchange.[7] Numerous provisions of the Exchange's by-laws and rules already address matters similar to those addressed by proposed Article Nineteenth.[8] Therefore, the adoption of Article Nineteenth falls within the broad authority expressly conferred by Delaware law and existing provisions under the Phlx Certificate of Incorporation.

[18] CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2000 (''Amendment No. 1''). In Amendment No. 1, the Phlx represented that the Phlx's Board has the authority to adopt Article Nineteen pursuant to Delaware corporate law, Pennsylvania contract law, and the Exchange's Certificate of Incorporation, by-laws, and rules.

[4] In connection with this proposed rule change, the Commission approved a propose rule change that adopted Article Twentieth. *See* Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR–Phlx–99–48). Article Twentieth provides, in part, that the Exchange's Board of Governors (''Board'') shall have the power to assess such fees, dues, and other charges upon members, lessors and lessees of memberships and holders of permits (or any of them) as the Board may from time to time adopt by resolution or set forth in the Rules of the Board. On May 11, 2000 the Commission approved a proposed rule change, which amended Article Twentieth to include the words ''owner'' and ''member organization'' and to define the word ''owner'' to clarify the original intent of Article Twentieth. *See* Securities Exchange Act Release No. 42773 (May 11, 2000), 65 FR 31622 (May 18, 2000) (SR–Phlx–00–30).

[5] Section 242 of the DGCL permits the board of a non-stock corporation to adopt amendments to the corporation's Certificate of Incorporation.

[6] *See also* 8 *Del. C.* § 121(a) (providing that in addition to powers expressly granted by law or the Certificate of Incorporation, the corporation and its directors may exercise ''any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation'').

[7] Article Third states, in part, that the Exchange may operate as and perform all functions of a national securities exchange and engage in any lawful act or activity for which corporations may be organized under the DGCL.

[8] *See, e.g.,* By-Law Art. XV, § 15–1(a) (providing that a membership may be leased in accordance with such rules as the Board may adopt); Rule 930 (setting forth required terms of lease agreement and providing, among other things, that the Exchange may dispose of a membership subject to a lease agreement); Rule 960.1 (providing that all members, member organizations and any persons associated with any member are subject to expulsion, suspension, termination as to activities at the Exchange or any other fitting sanction for violation of the Rules of the Exchange); *see also* Certificate of Incorporation, Article 20th (giving Board plenary authority to assess fees, dues and other charges and to impose penalties, including cancellation of a membership and forfeiture of all rights as a lessor or lessee, for nonpayment).

Pursuant to Article Nineteenth, the Board would have the authority to make rules that impact lease arrangements, including adopting rules relating to the termination of lease agreements. As discussed, the Exchange's Certificate of Incorporation, by-laws and rules already include several provisions addressing such authority.[9] Moreover, the Exchange's by-laws require lessors and lessees (as members) to pledge to abide by the rules as they may be amended from time to time.[10]

Accordingly, under the DGCL and the Exchange's Certificate of incorporation, by-laws, and rules, the Exchange represents that its Board of Governors has the authority to adopt Article Nineteenth without approval thereof by members, or by owners, lessors, or lessees of memberships.

Proposed Article Nineteenth is also permissible as a matter of Pennsylvania contract law. The provisions of Article Nineteenth authorizing the adoption of rules affecting lease agreements between lessors and lessees are lawful because, under the terms of its relationships with both lessors and lessees, the Exchange has the right to adopt by-laws, rules, or regulations that affect those lessors and lessees. Pennsylvania law holds that a contracting party may lawfully exercise its own contractual rights against another party to the contract, even if doing so interferes with the terms of a separate agreement of the other party. Here, the potential suspension or termination of a lease agreement in accordance with the rules of the Exchange is permissible under the terms of the Exchange's separate agreements with each of the parties to the lease agreement.

Both lessors and lessees (as members) agree respectively as a condition of approval of the right to lease seats and as a condition of approval for membership that the Exchange may effectuate changes to their lease agreements, including termination. As a condition of the right to lease their seats, lessors agree ''to abide by the [Exchange's] By-Laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws.'' *See* By-Law Art. XII, § 12–9(b). Lessees (as members) likewise make the same commitment. *See id.* at 12–9(a). By agreeing to abide by future by-laws, rules, and regulations, lessors and lessees necessarily grant permission to the Exchange to adopt rules pursuant to which their lease agreements may be suspended or terminated. Indeed, the Exchange has already repeatedly exercised its right to adopt rules and by-laws directly impacting lessors and lessees in a variety of rules, including Rule 930, which closely regulates the terms and conditions of lease agreements.[11] Accordingly, article Nineteenth, which would provide in express form the authorization for the adoption of rules suspending or terminating lease agreements, would simply authorize that which is countenanced by the terms of the Exchange's existing relationships with lessors and lessees, and is thereby permissible as a matter of Pennsylvania contract law.

Proposed Article Nineteenth was properly adopted by the Exchange Board under Delaware law and is permissible as a matter of Pennsylvania contract law. As a result, the Exchange believes it should take effect in accordance with its terms following SEC approval and the filing of Article Nineteenth with the Secretary of State of the State of Delaware.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to provide for specific authority regarding the regulation of leases, including the rights and obligations of lessors and lessees. Article Nineteen will enable the Board to adopt and oversee specific rules relating to the leasing of memberships to protect and promote the best interests of the Exchange.

The Exchange acknowledges that any such rules or resolutions, which are adopted by the Board, shall be filed with the Commission to the extent required pursuant to Section 19(b) of the Act[12] and Commission rules thereunder. Moreover, it is intended that such rules or resolutions proposed by the Exchange and related to the leasing of memberships, primarily in connection with the termination or suspension of lease agreements, shall delineate, if applicable, the notice and procedural requirements that address any potentially adversely affected party to be followed prior to terminating or suspending a lease agreement.

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[13] in general, and with Section 6(b)(5),[14] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest by enabling the Board to determine whether, and under what terms and conditions, memberships may be leased.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change imposes no burden on competition.

c. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[9] *See, e.g.,* Certificate of Incorporation, article Thirteenth (lessor entitled to vote on compromise or arrangement); Certificate of incorporation, Article Seventeenth (lessor entitled to receive any distribution of assets upon liquidation); By-Law Article I, Section 1–1 defining lessor and lessee); By-Law Article XII, Section 12–8 (authorizing lessor application fee as fixed from time to time by the Board, lessor initiation fee and fee upon transfer of equitable title to a membership); and Rule 930 (setting forth required terms of lease agreements).

[10] *See* Exchange By-Law Article XII, Section 12–9. As a condition of the right to lease their seats, lessors agree ''to abide by the [Exchange's] By-Laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws.'' Lessees, as members, likewise make the same commitment.

[11] Other examples include By-Law Art. I, § 1–1 (defining lessor and lessee); By-Law Art. XII, § 12–1 (a member conducts business on the Exchange); By-Law Art. XII, § 12–8 (authorizing lessor application fee, lessor initiation fee, and fees upon transfer of equitable title); By-Law Art. XIV, §§ 14–1, 14–2, 14–5 (the Exchange can impose charges on members, including penalties for non-payment of fees); By-Law Art. XV, § 15–1 (the Exchange approves lessees); Rule 931 (the Exchange approves lessors); Rule 960.1 *et seq.* (the Exchange may discipline members).

[12] 15 U.S.C. 78s(b).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–50 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1154 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.875 (5⅞) percent for the January–March quarter of FY 2001.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 01–1200 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. § 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special 301'' provisions in the trade act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the trade act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Friday, February 16, 2001.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property (202) 395–6864; Kira Alvarez or John Desrocher, Directors for Intellectual Property (202) 395–6864, or Stephen Kho, Assistant General Counsel (202) 395–3851, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

In identifying countries that deny adequate and effective protection of intellectual property rights in 2001, USTR will continue to pay special attention to other countries' efforts to reduce piracy of optical media (music CDs, video CDs, CD–ROMs, and DVDs) and prevent unauthorized government use of computer software. USTR will also focus on countries' compliance with their WTO TRIPS obligations, which for developing country members came due on January 1, 2000.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a Priority Foreign Country under Section 182(a)(2) of the Trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, *i.e.,* no later than April 30, 2001.

Requirements for Comments

Comments should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary

information for assessing the effect of the acts, policies and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English and provided in twenty copies. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''business confidential'' in a contrasting color ink at the top of each page of each copy. A non-confidential version of the comment must also be provided.

All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 committee, Room 100A, 600 17th Street, NW., Washington, DC 20508, and must be received no later than 12:00 noon on Friday, February 16, 2001.

Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Joseph S. Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 01–1220 Filed 1–12–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–217]

WTO Consultations Regarding The Continued Dumping and Subsidy Offset Act of 2000

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on December 21, 2000, Australia, Brazil, the European Communities (''EC''), India Indonesia, Japan, Korea, and Thailand, acting jointly and severally, requested consultations with the United States under the Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU''), the General Agreement Regarding Tariffs and Trade 1994 (''GATT 1994''), the Agreement on the Implementation of Article VI of GATT 1994 (''Antidumping Agreement'') and the Agreement on Subsidies and Countervailing Duties (''SCM Agreement'') regarding the Continued Dumping and Subsidy Offset Act of 2000 (''Offset Act''), Public Law No. 106–387. The requesting parties allege that the Offset Act is inconsistent with certain obligations of the United States under GATT 1994, the Antidumping Agreement and the SCM Agreement. Pursuant to Article 4.3 of the DSU, such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and the requesting parties. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 9, 2001, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Byrd Amendment, Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Rhonda K. Schnare, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Consultation Request

The Continued Dumping and Subsidy Offset Act of 2000 amends the Tariff Act of 1930 to provide that duties collected pursuant to an antidumping duty order, a countervailing duty order or a finding under the Antidumping Act of 1921 are to be annually distributed to the affected domestic producers for their qualifying expenses.

The consultation request alleges the Offset Act constitutes a specific action against dumping or subsidization that is not contemplated by GATT 1994, the Antidumping Agreement or the SCM Agreement. The request further alleges that the Offset Act prevents the reasonable and impartial administration of the U.S. laws implementing the provisions of the Antidumping Agreement and the SCM Agreement regarding standing determinations and undertakings. Specifically, the request alleges that the Offset Act is inconsistent with

Article 18.1 of the Antidumping Agreement, in conjunction with Article VI:2 of GATT 1994 and Article 1 of the Antidumping Agreement;

Article 32.1 of the SCM Agreement, in conjunction with Article VI:3 of GATT 1994 and Articles 4.10, 7.9 and 10 of the SCM Agreement;

Article X(3)(a) of GATT 1994;

Article 5.4 of the Antidumping Agreement and Article 11.4 of the SCM Agreement;

Article 8 of the Antidumping Agreement and Article 18 of the SCM Agreement; and

Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement''), Article 18.4 of the Antidumping Agreement and Article 32.5 of the SCM Agreement.

In addition, the request alleges that the offsets paid under the Act constitute specific subsidies with the meaning of Article 1 of the SCM Agreement which may cause adverse effects to the requesting parties' interests within the meaning of Article 5 of the SCM Agreement.

Finally, the request asserts that, whether or not in conflict with the cited agreements, the Offset Act may nullify or impair benefits accruing to the requesting parties in a manner described in Article XXIII:1(b) of GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and

provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–217, Byrd Amendment Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–1159 Filed 1–12–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Willoughby Lost Nation Municipal Airport, Willoughby, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The proposal consists of one parcel of land totaling approximately 12.903 acres for an outdoor soccer facility. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to dispose of the property. The land was acquired under FAA Project Nos.: AIP–3–39–0090–0185 and AIP–3–39–0090–0589. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. Together this proposal is for approximately 12.903 acres in total.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be used for the development of soccer-specific facilities, which have proven to enhance the economy for many Ohio communities in recent years. With over 55,000 registered players in Ohio-North alone, the opportunity to bring major and minor events into the Willoughby area would be significant. This development will also aide in increasing the positive tax revenue stream to the City, and add to the vitality of the existing sports complex during the spring, summer & fall months.

The proceeds from the lease of the land will be used for airport improvements and operation expenses at Willoughby Lost Nation Municipal Airport.

DATES: Comments must be received on or before February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie R. Swann, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.5, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7277. Documents reflecting this FAA action may be reviewed at this same location or at Willoughby Lost Nation Municipal Airport, Willoughby, Ohio.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property:

Legal Description of a 12.903 Acre Parcel Being Part of Land of the City of Willoughby Who Claims Title Through Instrument Recorded in Volume 212, Page 908 of the Lake County Records

Situated in the City of Willoughby, County of Lake and State of Ohio and known as being part of Original Lot No. 6, Douglas Tract as is further bounded and described as follows:

Beginning at a monument in the center of the cul-de-sac of Jet Center Place, as recorded in Volume 16, Page 34 of the Lake County Map Records.

Thence North 14′02′00″ East 68.50 feet to an iron pin found in the westerly line of a6.8187 acre parcel of land of the City of Willoughby recorded in Vol. 680, Page 252 of Lake County Official Records;

Thence North 1′14′52″ East, along said line, 82.96 feet to an iron pin found at the northwesterly corner of said land and being the principal place of beginning;

Course 1: Thence North 1′44′30″ East, along a line, 903.33 feet to an iron pin found at the southerly line of land conveyed to Lost Nation Parkway Ltd. by Document No. 980042081 of the Lake County Records;

Course II: Thence South 88′15′30″ East, along said southerly line and its prolongation easterly, 623.50 feet to an iron pin set;

Course III: Thence South 1′44′30″ West 899.57 feet to an iron pin found at the northeasterly corner of said land of the City of Willoughby;

Course IV: Thence North 88′36′14″ West, along said land, 623.51 feet to the principal place of beginning and containing 12.903 acres of land according to a survey made in May, 2000 by Richard J. Bilski, Ohio Professional Surveyor No. 5244 of CT Consultants, Inc., 35000 Kaiser Court, Willoughby, Ohio 44094;

The bearing stated herein are based upon the recorded centerline of Jet Center Place. All the iron pins, either set or found are 5⁄8 iron rebar with yellow caps marked ''CT Consultants, Inc.''

Issued in Belleville, Michigan, December 8, 2000.

Irene Porter,

Manager, Detroit Airports District Office, Great Lakes Region

[FR Doc. 01–712 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2001–8620]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 19, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA 400 Seventh Street, SW, Room 6123,Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Compliance Labeling of Warning Devices in 49 CFR Section 571.125

Type of Request: Reinstatement of Clearance.

OMB Clearance Number: 2127–0506.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: 49 U.S.C. 30111, 30112 and 30117 (Appendix 1) of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as she/he deems necessary.

Using this authority, the agency issued FMVSS No. 125, ''Warning Devices'' (Appendix 2), which applies to devices, without self contained energy sources, that are designed to be carried mandatorily in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds and voluntarily in other vehicles. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Description of the need for the information and proposed use of the information: Each manufacturer of warning triangles must label each device to comply with Standard No. 125. This standard establishes requirements for devices, without self-contained energy sources. Without proper deployment and use, the effectiveness of the devices may be greatly diminished, and may lead to serious injuries due to rear end collisions between moving traffic and disabled vehicles.

The warning device shall be permanently and legibly marked and also provide instructions for its erection and display. Each device shall be labeled with; (a) the name of the manufacturer, (b) the month and year of manufacture, (c) the DOT symbol, or the statement that the warning device complies with all applicable FMVSS. The instructions for each device shall include a recommendation that the driver activate the vehicular hazard warning signal lamps before leaving the vehicle to erect the warning device. Also, the instructions shall include an illustration indicating recommended positioning.

Without these devices and instructions there could be more deaths and injuries caused by stopped or disabled motor vehicles.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): There are three manufacturers labeling approximately 2.85 million warning devices (triangles) per year for the last few years. Based on the estimated number of warning triangles produced per year, the frequency of response is estimated to be 2.85 million.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: For the 2.85 million warning triangles produced per year, the tooling to label them would be replaced after about 20 years of service being used to make about 200K devices per year. The machining each mold that would be replaced is about 8 hours at a cost of $37.50 per hour, or a cost of $300. Assuming that this past years production level of 2.85 million devices were built each year for the last twenty years (an over-estimate that ignores the long steady growth of the market), the total number of devices manufactured would be 57 million. The tooling needs to be replaced every 4 million uses; the total number of tools used in the last 20 years is 14.25. The machining for the

labeling in each tool would be 14.25 times 8 hours divided by 57 million, or 0.000002 hour per device. Thus the current annual cost for the 2.85 million devices manufactured is 5.7 hours × $37.50 = $213.75.

Authority: 440 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: January 9, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1216 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2001–8618]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 19, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA 400 Seventh Street, SW, Room 6123,Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Labeling of Retroreflective Materials for Heavy Trailer Conspicuity

Type of Request: Reinstatement of Clearance.

OMB Clearance Number: 2127–0569.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: The permanent marking of the letters ''DOT–C2'', ''DOT–C3'' or ''DOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material is the information collection.

Description of the need for the information and proposed use of the information: Federal Motor Vehicle Safety Standard No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' specifies requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic results by providing adequate roadway illumination, improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. For certification and identification purposes, the Standard requires the permanent marking of the letters ''DOT–C2,'' ''DOT–C3,'' or ''DOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity.

The manufacturers of new tractors and trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing trailer conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements of the standard, and the compliance testing of new tractors and trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them to certify compliance. Because wider stripes of material of lower brightness also can provide the minimum safety performance, the marking system serves the additional role of identifying the minimum stripe width required for the retroreflective brightness of the particular material. Since the differences between the brightness grades of suitable retroreflective conspicuity material is not obvious from inspection, the marking system is necessary for tractor and trailer manufacturers and repair shops to assure compliance and for FHWA to inspect tractors and trailers in use.

Permanent labeling is used to identify retroreflective material having the minimum properties required for effective conspicuity of trailers at night. The information enables the FHWA to make compliance inspections, and it aids tractor and trailer owners and repair shops in choosing the correct repair materials for damaged tractors and trailers. It also aids small trailer manufacturers in certifying compliance of their products.

The FHWA will not be able to determine whether trailers are properly equipped during roadside inspections without labeling. The use of cheaper and more common reflective materials, which are ineffective for the

application, would be expected in repairs without the labeling requirement.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): The respondents are likely to be manufacturers of the conspicuity material. The agency is aware of at least three. Based on the estimated number of feet of conspicuity material for a year's installation on new tractors and trailers, the number of imprints of the information is estimated to be 10 million.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The cost to manufacturers of extending the label requirement is the maintenance and amortization of printing rollers and the additional dye or ink consumed. The labels are to be placed at intervals of about 18 inches on rolls of retroreflective conspicuity tape. The labels are printed during the normal course of steady flow manufacturing operations without a direct time penalty.

Two methods of printing the label are in use. One method uses the same roller that applies the dye to the red segments of the material pattern. The roller is resurfaced annually using a computerized etching technique. The ''DOT–C2'' label was incorporated in the software to drive the roller resurfacing in 1993, and there is no additional cost to continue the printing of the label. In fact, costs would be incurred to discontinue the label.

The second method uses a separate roller to apply the label. The manufacturer using this technique reports that these rollers have been in service for 5 years without detectable wear and predicts a service life of at least fifteen years. Four rollers costing about $2,500 each are used. A straight line depreciation of the rollers over 15 years equals $667 per year. With an annual allowance for $333 for additional dye, the annual total industry cost of maintaining the ''DOT–C2'' label is about $1,000.

Authority: 440 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: January 9, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards

[FR Doc. 01–1217 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2000–8619]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 19, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA 400 Seventh Street, SW., Room 6123,Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Replaceable Light Source Dimensional Information for 49 CFR Part 564

Type of Request: Reinstatement of Clearance.

OMB Clearance Number: 2127–0563.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: The information to be collected is in response to 49 CFR Part 564; ''Replaceable Light Source Dimensional Information.'' Persons desiring to use newly designed replaceable headlamp light sources are required to submit interchangeability and performance specifications to the agency. After a short agency review to assure completeness, the information is placed in a public docket for use by any person who would desire to manufacture headlamp light sources for highway motor vehicles. In Federal Motor Vehicle Safety Standard No. 108, ''Lamps, reflective devices and associated equipment,'' Part 564 submissions are referenced as being the source of information regarding the performance and interchangeability information for legal headlamp light sources, whether original equipment or replacement equipment. Thus, the submitted information about headlamp light sources becomes the basis for certification of compliance with safety standards.

Description of the need for the information and proposed use of the information: The information is to be placed in a public docket for the use by vehicle, headlamp and headlamp light source manufacturers for determining the interchangeability aspects of headlamp light sources for manufacturing purposes and for the design and manufacture of headlamps. In order for replacement light sources to be designated as acceptable replacements, the replacement light sources also are required to comply with the dimensional and performance information in the docket for its type. The Federal program for reducing highway fatalities, injuries and accidents would likely be adversely affected if the information was not collected, because the bulbs would, in fact, not be standardized for performance and interchangeability. If the interchangeability information were not available to manufacturers who normally provide original equipment and aftermarket parts, replacements could become significantly more costly to replace upon burnout, and ready availability would also likely diminish because the replacements would be available from only the vehicle's manufacturer or its dealer. As a potential adverse safety consequence, more and more vehicles would likely be on the highways at night with headlamps having one or more failed bulbs because of the higher expense and lower availability, and therefore reduce the roadway illumination and increase the risk of accident. In the event that the information collection were not reapproved, it is likely that the agency would have to reinstate headlamp light source information as part of the federal lighting standard and thus any new light source designs could be used only after a lengthy and costly rulemaking instead of this simple review and reference procedure.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): For the burdened parties, only those which develop a new or modified headlamp light source or other additional interchange information will have to submit information. Based on the last three years of Part 564 data collection, sixteen submissions have been received.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The average estimated cost of the information submissions is estimated to be 4.2 hours per submission at $100 per hour for a cost of $420 each, thus at a rate of 16/3 submissions per year, the average annual cost is $2240 and the average annual hour burden is 22.9 hours.

Issued on: January 9, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1218 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 1 PM on Friday, January 26, 2001, by conference call in the Administrator's Office, room 5424, 400 7th Street, S.W. Washington, D.C. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than January 22, 2001, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on January 9, 2001.

Marc C. Owen,

Chief Counsel.

[FR Doc. 01–1176 Filed 1–12–01; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Departmental Offices Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Alteration to a Privacy Act System of Records.

SUMMARY: The Department is altering its system of records, Treasury/DO .203—Public Transportation Incentive Program Records.

DATES: Comments must be received no later than February 15, 2001. The proposed system of records will be effective February 26, 2001, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington DC, 20220.

FOR FURTHER INFORMATION CONTACT: Les Smith, Program Manager, Facilities Management Division, (202) 622–0989, fax (202) 622–5334.

SUPPLEMENTARY INFORMATION: The Department is altering its system of records notice pertaining to the public transportation incentive program to bring its format into conformance with the other Treasury-wide systems of records notices by adding the following Treasury bureaus to the notice: Bureau of Alcohol, Tobacco and Firearms (ATF); Office of the Comptroller of the Currency (OCC); United States Customs Service (CS); Federal Law Enforcement Training Center (FLETC); Internal Revenue Service (IRS); United States Secret Service (USSS); and Office of Thrift Supervision (OTS). The system location is revised by listing each bureau under ''System Location.''

The ''System manager(s)'' is revised to identify the official responsible for the program at each bureau. The ''Categories of records in the system'' has been expanded to include records relating to the incentives authorized under the Federal Workforce Transportation Program. The ''Purpose(s)'' statement and the ''Notification procedures'' are also being revised. Under ''Authority for maintenance of the system,'' new authority citations are being added as needed by individual bureaus. Three new routine uses (routine uses 7, 8 and 9) are being added to the system notice and routine uses (2) and (6) are being amended. The entry under ''Record source categories'' is also being revised.

The records are used to administer the public transportation incentive or subsidy programs provided by the bureaus for eligible employees. The notice for the system of records was last published in its entirety on December 17, 1998, at 63 FR 69737.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities

for Maintaining Records About Individuals, dated February 8, 1996.

The system of records, ''Public Transportation Incentive Program Records-Treasury/DO,'' is published in its entirety below.

Dated: January 3, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

SYSTEM NAME:

Public Transportation Incentive Program Records-Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

1. a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, DC 20220.

2. Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, DC 20226.

3. Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

4. United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington DC 20229.

5. Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, DC 20228.

6. Federal Law Enforcement Training Center (FLETC): Glynco, Ga. 31524.

7. Financial Management Service (FMS): 401 14th Street, SW, Washington, DC 20227.

8. Internal Revenue Service (IRS): 1111 Constitution Avenue, NW, Washington, DC 20224.

9. United States Mint (MINT): 801 9th St. NW, Washington, DC 20220.

10. Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

11. United States Secret Service (USSS): 950 H Street, NW, Washington, DC 20001.

12. Office of Thrift Supervision (OTS): 1700 G Street, NW, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have applied for or who participate in the Public Transportation Incentive Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Public Transportation Incentive Program application form containing the participant's name, last four digits of the social security number, place of residence, office address, office telephone, grade level, duty hours, previous method of transportation, costs of transportation, and the type of fare incentive requested. Incentives authorized under the Federal Workforce Transportation Program may be included in this program.

(2) Reports submitted to the Department of the Treasury in accordance with Treasury Directive 74–10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 132(f), and Public Law 101–509.

PURPOSE(S):

The records are used to administer the public transportation incentive or subsidy programs provided by Treasury bureaus for eligible employees. The system also enables the Department to compare these records with other Federal agencies to ensure that employee transportation programs benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and/or 7114;

(5) Agencies, contractors, and others to administer Federal personnel or payroll systems, and for debt collection and employment or security investigations;

(6) Other Federal agencies for matching to ensure that employees receiving PTI Program benefits are not listed as a carpool or vanpool participant, the holder of a parking permit; and to prevent the program from being abused;

(7) The Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) The Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority or other third parties when mandated or authorized by statute; and

(9) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper records, file folders and/or electronic media.

RETRIEVABILITY:

By name of individual, badge number or office.

SAFEGUARDS:

Access is limited to authorized employees. Files are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury Bureaus are:

(1) a. Departmental Offices: Assistant Director, Parking, Safety and Farecard Office, Facilities Management Division, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. Office of Inspector General: Office of Assistant Inspector for Resources, Office of Administrative Services, Suite 510, 740 15th St. NW., Washington, DC 20220.

(2) ATF: Chief, Safety Program Branch, Administrative Programs Division, Office of Management, 650 Massachusetts Ave., NW., Washington, DC 20226.

(3) BEP: Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

(4) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219–0001.

(5) CS: Chief, Headquarters Facilities Service Branch, 1300 Pennsylvania Avenue, NW., Suite 3.2C, Washington, DC 20229.

(6) FLETC: Associate Director for Planning & Resources Federal Law Enforcement Training Center, Glynco, GA 31524

(7) FMS: Director, Facilities Management Division, Financial Management Service, 3700 East West Hwy., Room 144, Hyattsville, MD 20782.

(8) IRS: Official prescribing policies and practices—Chief, National Office, Protective Program Staff, Director, Personnel Policy Division, 2221 S. Clark Street-CP6, Arlington, VA 20224. Officials maintaining the system—Supervisor of local offices where the records reside. (See IRS Appendix A for addresses.)

(9) Mint: Office of Management Services, 801 9th St. NW., Washington, DC 20220.

(10) BPD: Executive Director, Administrative Resources Center, 200 Third Street, Parkersburg, WV 26106.

(11) USSS: Assistant Director, Office of Administration, 950 H Street, NW., Washington DC 20373–5802.

(12) OTS: Director, Planning, Budget and Finance, Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions given in the Appendix for each Treasury bureau appearing at 31 CFR Part 1, Subpart C.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The source of the data are employees who have applied for the transportation incentive, the incentive program managers and other appropriate agency officials, or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–1010 Filed 1–12–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records Notices.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a new proposed system of records, ''Treasury/DO .003—Law Enforcement Retirement Claims Records.''

DATES: The proposed system of records will be effective February 26, 2001, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Director, Office of Personnel Policy, Room 6018-Metropolitan Square, Department of the Treasury, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Anne Carlucci, Office of Personnel Policy, (202) 622–2855.

SUPPLEMENTARY INFORMATION: The Department of the Treasury makes determinations concerning requests by Treasury employees that the positions they hold in a law enforcement bureau qualify as a law enforcement position (5 U.S.C. 8336(c)(1) and 8412(d)).

The records are maintained and used by the Departmental Office of Personnel Policy because government-wide Office of Personnel Management regulations require that the determination of coverage in a law enforcement position be made by the agency head or a designee who must report directly to the agency head or his/her deputy.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

This system of records, ''Treasury/DO .003—Law Enforcement Retirement Claims Records,'' is published in its entirety below.

Dated: January 3, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .003

SYSTEM NAME:

Law Enforcement Retirement Claims Records.

SYSTEM LOCATION:

These records are located in the Office of Personnel Policy, Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted claims for law enforcement retirement coverage (claims) with their bureaus in accordance with 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to claims filed by current and former Treasury employees under 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d). These case files contain all documents related to the claim including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8336(c)(1), 8412(d), 1302, 3301, and 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218 and 1959–1963 Comp., p. 519; and E.O. 10987.

PURPOSE(S):

The purpose of the system is to make determinations concerning requests by Treasury employees that the position he or she holds qualifies as a law enforcement position for the purpose of administering employment and retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or

potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing a claim, to the extent necessary to identify the individual whose claim is being adjudicated, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information which is necessary and relevant to the Department of Justice or to a court when the Government is party to a judicial proceeding before the court;

(6) To provide information to the National Archives and Records Administration for use in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(8) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic media.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access. Automated databases are password protected.

RETENTION AND DISPOSAL:

Disposed of after closing of the case in accordance with General Records Schedule 1, Civilian Personnel Records, Category 7d.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Policy, Room 6018-Metropolitan Square, Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting claims be provided a copy of the record under the claims process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting claims be provided a copy of the record under the claims process. However, after the action has been closed, an individual may request access to the official copy of the claim file by contacting the system manager. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the system manager. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–1011 Filed 1–12–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Means Test Thresholds

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLA) for means test income limitations. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 2000.

DATES: These rates are effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Chief Policy and Operations, Health Administration Service, (10C3), Veterans Health Administration, VA, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38 United States Code 1722(c), requires that on January 1 of each year, the Secretary increase the means test threshold amounts by the same percentage the maximum rates of pension benefits were increased under 38 U.S.C. 5312(a) during the preceding calendar year. Under the provisions of 38 U.S.C 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' indemnity compensation (DIC) program by the same percentage, and effective the same date, as increases in the benefit amount

payable under Title II of the Social Security Act.

On October 24, 2000, for the period beginning December 1, 2000, the Social Security Administration announced at 65 FR 63663 of the **Federal Register**, a 3.5 percent cost-of-living increase in Social Security Benefits under Title II of the Social Security Act. The Veteran Benefits Administration has indicated Pension benefits will be increased by a 3.5 percent cost-of-living increase effective December 1, 2000. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following income limitations for the Means Test Thresholds will be effective January 1, 2001.

TABLE 1.—MEANS TEST THRESHOLDS

(1) Veterans with no dependents:	
(a) Means Test Co-payment Exempted Category	$23,688
(b) Means Test Co-payment Required Category	23,689
(2) Veterans with 1 dependent:	
(a) Means Test Co-payment Exempt Category	28,429
(b) Means Test Co-payment Required Category	28,430
(3) Veterans with 2 dependents:	
(a) Means Test Co-payment Exempt Category .	30,015
(b) Means Test Co-payment Required Category	30,016
(4) Veterans with 3 dependents:	
(a) Means Test Co-payment Exempt Category	31,601
(b) Means Test Co-payment Required Category	31,602
(5) Veterans with 4 dependents:	
(a) Means Test Co-payment Exempt Category	33,187
(b) Means Test Co-payment Required Category	33,188
(6) Veterans with 5 dependents:	
(a) Means Test Co-payment Exempt Category	34,773
(b) Means Test Co-payment Required Category	34,774
(7) Child Income Exclusion is:	7,450
(8) The Medicare deductible is:	792
(9) Maximum annual Rate of Pension effective December 1, 2000 are:	
(a) The base rate is	9,304
(b) The base rate with one dependent is	12,186
(c) Add 1,586 each additional dependent.	

Approved: January 5, 2001.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 01–1180 Filed 1–12–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Report of New System of Records—Consolidated Data Information System—VA (97VA105).

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that VA is adding a new system of records entitled ''Consolidated Data Information System—VA'' (97VA105).

DATES: Comments on the establishment of the new system of records must be received no later than February 15, 2001. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the system will become effective February 15, 2001.

ADDRESSES: Comments may be submitted to Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1176, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration Privacy Act Officer (193B2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: Under Section 527 of Title 38, U.S.C., and the Government Performance and Results Act of 1993, Pub. L. 103–62, VA is required to measure and evaluate, on an ongoing basis, the effectiveness of VA benefit programs and services. In performing this required function, VA must collect, collate and analyze full statistical data regarding participation, provision of services, categories of beneficiaries, and planning of expenditures for all VA programs. For this reason, VA is establishing a new system of records, which combines information from several existing systems of records with information from non-VA sources. This combined database is necessary for VA to accurately and timely assess the current health care usage by the patient population served by VA, to forecast future demand for VA medical care by individuals currently eligible for service by VA medical facilities, and to understand the numerous implications of cross-utilization between VA and non-VA health care systems.

Records from the Patient Medical Record System (24VA136), the Patient Fee Basis Medical and Pharmacy Records (23VA136), Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23), Compensation, Pension, Education and Rehabilitation Records (58VA21/22), and Automated Medication Processing Records (56VA119) will be incorporated into this new system of records. Specific request files will be created for use in submitting requests for veteran-specific data from the Health Care Financing Administration (HCFA), the Department of Defense (DoD), and other non-VA data sources including state Medicaid databases. The new database will be created by including Medicare data records on utilization and enrollment for all VA users, enrollees and special category veterans. Utilization and enrollment data will also be extracted from the DoD military personnel system of records in order to supplement VA's database. This system will not be used by VA to make any determinations as to individual veteran's benefits. Because the exchange of data among VA, HCFA, DoD, and any other non-VA agencies will be only for the purpose of identifying current health care usage and forecasting future health care usage by VA beneficiaries, the computer matching provision of the Privacy Act does not apply.

VA will maintain the system of records in electronic form at VA Management Science Group, Bedford, Massachusetts, and VA Information Resource Center, Hines, Illinois. Copies or parts of these records may be maintained at VA Automation Center, Austin, Texas, and VA Allocation Resource Center, Braintree, Massachusetts. Multiple sites are needed because VA data files will be drawn from multiple locations and merged data files will be very large. Data in the system of records will include names, social security numbers (SSNs), demographic and health services utilization data for all VHA users and special veteran populations; inpatient, outpatient, physician supplier, nursing home, hospice, home care, and durable medical equipment data form HCFA; and utilization and enrollment data from DoD. The new database will be used to produce reports for statistical analyses on, for example: (1) The number of Medicare-eligible users who obtain health care services from VA,

Medicare, and both VA and Medicare providers (dual use); (2) the number of ''dual use'' veterans by specific disease categories; and (3) the inpatient, outpatient, and total costs associated with VA services and Medicare covered services by ''dual use'' veterans. Statistical reports will not contain individually identifiable health information.

We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. To Federal, State, and local agencies for the purpose of better identifying the total current health care usage of the patient population by VA, to forecast future demand for VA medical care, and as part of statistical matching programs.

VA needs to obtain information from other agencies in order to collect full statistical data regarding participation and provision of services to the patient population served by VA as well as non-VA health care systems. The records may also be disclosed as part of statistical matching programs to accomplish these purposes.

2. To Federal, State and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants and to protect their rights under law and assure that they are receiving all benefits to which they are entitled.

VA needs to obtain information from other agencies in order to measure and evaluate, on an ongoing basis, the effectiveness of VA benefit programs and services.

3. To a Federal, State, or local agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. The names and addresses of veterans may only be disclosed:

• To a Federal agency when it is relevant to a suspected violation or reasonably imminent violation of law; and

• To a State or local agency under a written request when it is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety.

VA must be able to comply with the requirements of agencies charged with enforcing the law, and investigations of violations or possible violations of law. VA must also be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

4. To epidemiological and other research facilities approved by the Under Secretary for Health for research purposes (disclosure excludes names and addresses).

VA must be able to disclose information for research purposes approved by the Under Secretary for Health.

5. To a Federal department or agency or to a contractor of a Federal department or agency in order to conduct Federal research necessary to accomplish a statutory purpose of an agency.

VA must be able to disclose information for research purposes needed to accomplish a statutory purpose of a Federal agency.

6. To the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to this agency in order to determine the proper disposition of such records.

7. To the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when the Agency, or any component thereof; or any employee of the Agency in his or her official capacity; where the Department of Justice or the Agency has agreed to represent the employee; or the U.S. when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which VA collects the information.

8. To individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA must be able to provide information to contractors or subcontractors with whom VA has a contract or agreement in order to perform the services of the contract or agreement.

Release of information from these records will be made only in accordance with the provisions of the Privacy Act of 1974 for investigative, judicial and administrative uses. The Privacy Act permits us to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law. VA has determined that release of information for these purposes is a necessary and proper use of information and that specific routine uses for transfer of this information are appropriate.

Approved: December 15, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

97VA105

SYSTEM NAME:

Consolidated Data Information System-VA.

SYSTEM LOCATION(S):

Records will be maintained at the following computer site locations: VA Management Science Group, 200 Springs Road, Bedford, Massachusetts 01730; and VA Information Resource Center, 5th Avenue & Roosevelt Road, Hines, Illinois 60141. Copies or parts of these records may be maintained at the following computer site locations: VA Automation Center, 1615 Woodward Street, Austin, Texas 78722; and VA Allocation Resource Center, 100 Grandview Road, Braintree, Massachusetts 02184.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning active duty military personnel, veterans, their spouses and their dependents, and individuals who are not VA beneficiaries, but who receive health care services from VHA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system will include veterans' names, addresses, dates of birth, VA claim numbers, SSNs, and military service information; medical benefit application and eligibility information; code sheets and follow-up notes; sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric medical information; prosthetic, pharmacy, nuclear medicine, social work, clinical laboratory and radiology information; patient scheduling information; family information such as next of kin, spouse and dependents; names, addresses, social security numbers and dates of birth; family medical history, employment information; financial information; third-party health plan information; information related to ionizing radiation and Agent Orange; date of death; VA claim and insurance file numbers; travel benefits information; military decorations; disability or pension payment information; information on indebtedness arising from 38 U.S.C. benefits; medical and dental treatment in the Armed Forces and claim information; applications for compensation, pension, education and rehabilitation benefits; information related to incarceration in a penal institution; medication profile such as name, quantity, prescriber, dosage, manufacturer, lot number, cost and administration instruction; pharmacy dispensing information such as pharmacy name and address.

The records will include information on DoD military personnel from two categories of DoD files: (1) Utilization files that contain inpatient and outpatient records, and (2) eligibility files from the Defense Eligibility Enrollment Reporting System (DEERS) containing data on all military personnel including those discharged from the Armed Services since 1972.

The records will include information on Medicare beneficiaries from HCFA databases: Denominator file (identifies the population being studied); Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment); and Group Health Plan.

The records include information on Medicaid beneficiaries' utilization and enrollment from state databases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 527 of 38 U.S.C. and the Government Performance and Results Act of 1993, Pub. L. 103–62.

PURPOSE(S):

The purpose of this system of records is to conduct statistical studies and analyses which will support the formulation of Departmental policies and plans by identifying the total current health care usage of the VA patient population.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from this system of records may be disclosed in accordance with the following routine uses:

1. Disclosure of identifying information, such as names, SSNs, demographic and utilization data, may be made to Federal, State, local, or tribal agencies such as the DoD, HCFA, and Medicare Payment Advisory Commission (MedPAC), as part of statistical matching programs for the purpose of better identifying the total current health care usage of the patient population served by VA in order to forecast future demand for VA medical care by VA medical facilities.

2. Disclosure may be made to Federal, State, local, and tribal government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants and assure that they are receiving all benefits to which they are entitled.

3. Disclosure may be made of information relevant to or indicating a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, to Federal, State, local, or tribal agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order listed pursuant thereto.

4. Disclosure may be made, excluding name and address (unless name and address are furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

5. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the recipient agency, the name (s) and address (s) of present or former personnel of the Armed Services and/or their dependents may be disclosed (a) To a Federal department or agency or (b) directly to a contractor of a Federal department or agency. When disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency and/or contractor to insure the appropriateness of the disclosure to the contractor.

6. Disclosure may be made to National Archives and Records Administration (NARA), General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

7. Records from this system of records may be disclosed to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: The Agency, or any component thereof; or any employee of the Agency in his or her official capacity; where the Department of Justice or the Agency has agreed to represent the employee; or the U.S. when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

8. Disclosure may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are maintained on magnetic tape, disk, or laser optical media.

RETRIEVABILITY:

Records may be retrieved by name, name and one or more criteria (*e.g.,* dates of birth, death and service), SSN or VA claim number.

SAFEGUARDS:

1. Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

2. Access to Automated Data Processing files is controlled at two levels: (1) Terminals, central processing units, and peripheral devices are generally placed in secure areas (areas

that are locked or have limited access) or are otherwise protected; and (2) the system recognizes authorized users by means of an individually unique password entered in combination with an individually unique user identification code.

3. Access to automated records concerning identification codes and codes used to access various VA automated communications systems and records systems, as well as security profiles and possible security violations is limited to designated automated systems security personnel who need to know the information in order to maintain and monitor the security of VA's automated communications and veterans' claim records systems. Access to these records in automated form is controlled by individually unique passwords/codes. Agency personnel may have access to the information on a need to know basis when necessary to advise agency security personnel or for use to suspend or revoke access privileges or to make disclosures authorized by a routine use.

4. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA or other security personnel and security access control devices.

RETENTION AND DISPOSAL:

Copies of back-up computer files will be maintained at VA Management Science Group, Bedford, Massachusetts, and VA Information Resource Center, Hines, Illinois.

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Management Science Group, VA Medical Center, 200 Springs Road, Bedford, Massachusetts 01730.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should submit a signed written request to the Director, Management Science Group, VA Medical Center, 200 Springs Road, Bedford, Massachusetts 01730.

RECORDS ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name or other personal identifier may write the System Manager named above and specify the information being contested.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information may be obtained from the Patient Medical Records System (24VA136); Patient Fee Basis Medical and Pharmacy Records (23VA136); Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23); Compensation, Pension, Education and Rehabilitation Records (58VA21/22); and Automated Medication Processing Records (56VA119); DoD utilization files and DEERS files; and HCFA Denominator file, Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment) and Group Health Plan, and State Medicaid beneficiaries' utilization and enrollment databases.

[FR Doc. 01–1112 Filed 1–12–01; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of New System of Records ''Agent Orange Registry—VA''.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''Agent Orange Registry—VA'' (105VA131).

DATES: Comments on the establishment of this system of records must be received no later than February 15, 2001. If no public comment is received, the new system will become effective February 15, 2001.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulatory Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration Privacy Act Officer (193B2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION:

1. Description of the Proposed Systems of Records.

The Agent Orange Registry located at the Austin Automation Center (AAC), Austin, Texas, is an automated integrated system containing demographic and medical data of registry examinations from 1988 until such time as the VA Secretary or Congress by law ends the registry program. These data were entered manually on code sheets by VA facility staff and copies sent to the AAC for entry into the Agent Orange Registry data set.

The purpose of this Agent Orange Registry system of records is to provide information about veterans who have had an Agent Orange Registry examination at a VA facility; to assist in generating hypotheses for research studies; provide management with the capability to track patient demographics; report birth defects among veteran's children; dioxin-related diseases; planning and delivery of health care services and associated costs; and with relation to claims for compensation may assist in the adjudication of claims possibly related to herbicide exposure although more comprehensive medical records are required for evaluation of subject claims.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member of staff person requests the record on behalf of, and at the written request of, that individual.

Individuals sometimes request the help of a member of Congress in resolving some issue relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the

preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record (s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 3301(f).

VA must be able to comply with the requirements of agencies charged with enforcing the law who are conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 United States Code.

NARA is responsible for archiving old records no longer actively used, but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

VA participates in various research programs and activities. VA must be able to disclose information for research purposes approved by the Under Secretary of Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed.

(a) To a Federal department or agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

VA must be able to disclose information for research purposes needed to accomplish a statutory purpose of a Federal agency. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

7. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, State, local or foreign, charged with responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom Va has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: The Agency, or any component thereof; or any employee of the Agency in his or her official capacity; where the DOJ or the Agency has agreed to represent the employee; or the U.S. when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by the DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

Whenever VA is involved in litigation, or occasionally when another party is involved in litigation and VA policies or operations could be affected by the outcome of the litigation, VA would be able to disclose information to the court or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which the VA collects the information.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, we use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: December 22, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

105VA131

SYSTEM NAME:

Agent Orange Registry–VA.

SYSTEM LOCATION:

Character-based data from Agent Orange Registry Code Sheets are maintained in a registry dataset at the Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who may have been exposed to dioxin or other toxic substance in a herbicide or defoliant during active military service in the Republic of Vietnam between 1962 and 1975 and have had an Agent Orange Registry examination at a Department of Veterans Affairs (VA) medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain the following information: Code sheet records recording VA facility code identifier where the veteran was examined or treated; veteran's name; address; social security number; military service serial number; claim number; date of birth; race/ethnicity; marital status; sex; branch of service; periods of service; areas of service in Vietnam; list of military units where veterans served; method of exposure to herbicides; veteran's self-assessment of health; date of registry examination; veteran's complaints/symptoms; reported birth defects among veteran's children; consultations; diagnoses; disposition (hospitalized, referred for outpatient treatment, etc.) and name and signature of examiner/physician coordinator, when available.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.) secs. 1710(e)(1)(B) and 1710(e)(1)(B) and 1720E.

PURPOSE(S):

The purpose of this Agent Orange Registry system of records is to provide information about: veterans who have had an Agent Orange Registry examination at a VA facility; to assist in generating hypotheses for research studies; provide management with the capability to track patient demographics; reported birth defects among veterans' children; dioxin-related diseases; planning and delivery of health care services and associated costs; and with relation to claims for compensation which may assist in the adjudication of claims possibly related to herbicide exposure although more comprehensive medical records are required for evaluation of subject claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 3301(f).

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of any agency, at the written request of the head of the Agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed.

(a) To a Federal department or Agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear when: the Agency, or any component thereof; or any employee of the Agency in his or her official capacity; where the DOJ or the Agency has agreed to represent the employee; or the U.S. when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation, and has an interest in such litigation, and the use of such records by the DOJ or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that the

disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data are maintained on Direct Access Storage Devices at the Austin Automation Center (AAC), Austin, Texas. AAC stores registry tapes for disaster back up at an off-site location.

RETRIEVABILITY:

Records are retrieved by name of veteran and social security number.

SAFEGUARDS:

Access to records at VA Headquarters is only authorized to VA personnel on a ''need to know'' basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Registry data maintained at the AAC can only be updated by authorized AAC personnel. Read access to the data is granted through a telecommunications network to authorized VA Headquarters personnel. AAC reports are also accessible through a telecommunications network on a read-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically. Physical access to the AAC is generally restricted to AAC staff, VA Headquarters employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Headquarters are safeguarded in secured storage areas.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards (clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (administrative issues), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards or the Management/Program Analyst, Environmental Agents Service (131), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420. Inquiries should include the veteran's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Director, Environmental Agents Service (131) or the Management/Program Analyst, Environmental Agents Service (131), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORDS PROCEDURES:

Refer to previous item ''Record Access Procedures.''

RECORD SOURCE CATEGORIES:

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, and records from Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

[FR Doc. 01–1113 Filed 1–12–01; 8:45 am]

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Federal Register

Tuesday,

January 16, 2001

Part II

Reader Aids

Cumulative List of Public Laws 106th Congress, Second Session

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 106th Congress, Second Session. Other cumulative lists (1993-1999) are available online at http://www.nara.gov/fedreg. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The text of laws may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.acess.gpo.gov/nara/index.html. Some laws may not yet be available online or for purchase.

Public Law	Title	Approved	114 Stat.
106–171	Electronic Benefit Transfer Interoperability and Portability Act of 2000	Feb. 11, 2000	3
106–172	Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000	Feb. 18, 2000	7
106–173	Abraham Lincoln Bicentennial Commission Act	Feb. 25, 2000	14
106–174	Poison Control Center Enhancement and Awareness Act	Feb. 25, 2000	18
106–175	To authorize the President to award a gold medal on behalf of the Congress to John Cardinal O'Connor, Archbishop of New York, in recognition of his accomplishments as a priest, a chaplain, and a humanitarian.	Mar. 5, 2000	21
106–176	Omnibus Parks Technical Corrections Act of 2000	Mar. 10, 2000	23
106–177	To reduce the incidence of child abuse and neglect, and for other purposes	Mar. 10, 2000	35
106–178	Iran Nonproliferation Act of 2000	Mar. 14, 2000	38
106–179	Indian Tribal Economic Development and Contract Encouragement Act of 2000	Mar. 14, 2000	46
106–180	Open-market Reorganization for the Betterment of International Telecommunications Act	Mar. 17, 2000	48
106–181	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century	Apr. 5, 2000	61
106–182	Senior Citizens' Freedom to Work Act of 2000	Apr. 7, 2000	198
106–183	To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the ''John K. Rafferty Hamilton Post Office Building''.	Apr. 13, 2000	200
106–184	To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the ''Joseph Ileto Post Office''.	Apr. 14, 2000	201
106–185	Civil Asset Forfeiture Reform Act of 2000	Apr. 25, 2000	202
106–186	Expressing the sense of Congress that the President of the United States should encourage free and fair elections and respect for democracy in Peru.	Apr. 25, 2000	226
106–187	To direct the Secretary of Agriculture to convey certain National Forest lands to Elko County, Nevada, for continued use as a cemetery.	Apr. 28, 2000	227
106–188	Bikini Resettlement and Relocation Act of 2000	Apr. 28, 2000	228
106–189	To direct the Secretary of the Interior to release reversionary interests held by the United States in certain parcels of land in Washington County, Utah, to facilitate an anticipated land exchange.	Apr. 28, 2000	229
106–190	To clarify the legal effect on the United States of the acquisition of a parcel of land in the Red Cliffs Desert Reserve in the State of Utah.	Apr. 28, 2000	230
106–191	To amend the Mineral Leasing Act to increase the maximum acreage of Federal leases for sodium that may be held by an entity in any one State, and for other purposes.	Apr. 28, 2000	231
106–192	Lamprey Wild and Scenic River Extension Act	May 2, 2000	233
106–193	Methane Hydrate Research and Development Act of 2000	May 2, 2000	234
106–194	To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes.	May 2, 2000	239
106–195	Recognizing the 50th anniversary of the Korean War and the service by members of the Armed Forces during such war, and for other purposes.	May 2, 2000	244
106–196	To designate the United States courthouse located at 223 Broad Avenue in Albany, Georgia, as the ''C.B. King United States Courthouse''.	May 2, 2000	245
106–197	To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes.	May 2, 2000	246
106–198	Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 5, 2000	249
106–199	Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 5, 2000	250
106–200	Trade and Development Act of 2000	May 18, 2000	251
106–201	To amend the Endangered Species Act of 1973 to provide that certain species conservation reports shall continue to be required to be submitted.	May 18, 2000	307
106–202	Worker Economic Opportunity Act	May 18, 2000	308
106–203	To designate the Federal building and United States courthouse located at 1300 South Harrison Street in Fort Wayne, Indiana, as the ''E. Ross Adair Federal Building and United States Courthouse''.	May 22, 2000	310
106–204	To designate the Federal building located at 500 Pearl Street in New York City, New York, as the ''Daniel Patrick Moynihan United States Courthouse''.	May 23, 2000	311
106–205	Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II.	May 26, 2000	312
106–206	To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes.	May 26, 2000	314
106–207	Hmong Veterans' Naturalization Act of 2000	May 26, 2000	316
106–208	National Historic Preservation Act Amendments of 2000	May 26, 2000	318
106–209	To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the ''John J. Buchanan Post Office Building''.	May 26, 2000	320
106–210	Muhammad Ali Boxing Reform Act	May 26, 2000	321
106–211	To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III.	May 26, 2000	330
106–212	American Institute in Taiwan Facilities Enhancement Act	May 26, 2000	332
106–213	To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama.	May 26, 2000	334

Public Law	Title	Approved	114 Stat.
106–214	To amend the law that authorized the Vietnam Veterans Memorial to authorize the placement within the site of the memorial of a plaque to honor those Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service.	June 15, 2000	335
106–215	Immigration and Naturalization Service Data Management Improvement Act of 2000	June 15, 2000	337
106–216	To authorize leases for terms not to exceed 99 years on land held in trust for the Torres Martinez Desert Cahuilla Indians and the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria.	June 20, 2000	343
106–217	To provide that land which is owned by the Lower Sioux Indian Community in the State of Minnesota but which is not held in trust by the United States for the Community may be leased or transferred by the Community without further approval by the United States.	June 20, 2000	344
106–218	To designate the Federal building located at 2201 C Street, Northwest, in the District of Columbia, currently headquarters for the Department of State, as the ''Harry S Truman Federal Building''.	June 20, 2000	345
106–219	To designate the Washington Opera in Washington, D.C., as the National Opera	June 20, 2000	346
106–220	Carlsbad Irrigation Project Acquired Land Transfer Act	June 20, 2000	347
106–221	Wellton-Mohawk Transfer Act	June 20, 2000	351
106–222	Freedom to E-File Act	June 20, 2000	353
106–223	To authorize the award of the Medal of Honor to Ed W. Freeman, James K. Okubo, and Andrew J. Smith.	June 20, 2000	356
106–224	Agricultural Risk Protection Act of 2000	June 20, 2000	358
106–225	To authorize the President to award posthumously a gold medal on behalf of the Congress to Charles M. Schulz in recognition of his lasting artistic contributions to the Nation and the world, and for other purposes.	June 20, 2000	457
106–226	To provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such Act is ratified by the voters of the District of Columbia.	June 27, 2000	459
106–227	Recognizing the 225th birthday of the United States Army	June 28, 2000	460
106–228	To make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes.	June 29, 2000	462
106–229	Electronic Signatures in Global and National Commerce Act	June 30, 2000	464
106–230	To amend the Internal Revenue Code of 1986 to require 527 organizations to disclose their political activities.	July 1, 2000	477
106–231	To redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, California, and known as the Compton Main Post Office, as the ''Mervyn Malcolm Dymally Post Office Building''.	July 6, 2000	484
106–232	To redesignate the Federal building located at 10301 South Compton Avenue, in Los Angeles, California, and known as the Watts Finance Office, as the ''Augustus F. Hawkins Post Office Building''.	July 6, 2000	485
106–233	To designate the facility of the United States Postal Service at 200 East Pinckney Street in Madison, Florida, as the ''Captain Colin P. Kelly, Jr. Post Office''.	July 6, 2000	486
106–234	To designate the building of the United States Postal Service located at 5 Cedar Street in Hopkinton, Massachusetts, as the ''Thomas J. Brown Post Office Building''.	July 6, 2000	487
106–235	To designate the United States Post Office located at 3675 Warrensville Center Road in Shaker Heights, Ohio, as the ''Louise Stokes Post Office''.	July 6, 2000	488
106–236	To designate the United States Post Office located at 125 Border Avenue West in Wiggins, Mississippi, as the ''Jay Hanna 'Dizzy' Dean Post Office''.	July 6, 2000	489
106–237	To designate the United States Post Office located at 713 Elm Street in Wakefield, Kansas, as the ''William H. Avery Post Office''.	July 6, 2000	490
106–238	To redesignate the facility of the United States Postal Service located at 100 Orchard Park Drive in Greenville, South Carolina, as the ''Keith D. Oglesby Station''.	July 6, 2000	491
106–239	To designate certain facilities of the United States Postal Service in South Carolina	July 6, 2000	492
106–240	To designate the facility of the United States Postal Service located at 8409 Lee Highway in Merrifield, Virginia, as the ''Joel T. Broyhill Postal Building''.	July 6, 2000	494
106–241	To designate the facility of the United States Postal Service located at 3118 Washington Boulevard in Arlington, Virginia, as the ''Joseph L. Fisher Post Office Building''.	July 6, 2000	495
106–242	To designate the facility of the United States Postal Service located at 1818 Milton Avenue in Janesville, Wisconsin, as the ''Les Aspin Post Office Building''.	July 6, 2000	496
106–243	To direct the Secretary of the Interior, the Bureau of Reclamation, to conduct a feasibility study on the Jicarilla Apache Reservation in the State of New Mexico, and for other purposes.	July 10, 2000	497
106–244	To amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.	July 10, 2000	499
106–245	Radiation Exposure Compensation Act Amendments of 2000	July 10, 2000	501
106–246	Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes.	July 13, 2000	511
106–247	Neotropical Migratory Bird Conservation Act	July 20, 2000	593
106–248	To authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes.	July 25, 2000	598
106–249	Griffith Project Prepayment and Conveyance Act	July 26, 2000	619
106–250	Pope John Paul II Congressional Gold Medal Act	July 27, 2000	622
106–251	To provide for the award of a gold medal on behalf of the Congress to former President Ronald Reagan and his wife Nancy Reagan in recognition of their service to the Nation.	July 27, 2000	624
106–252	Mobile Telecommunications Sourcing Act	July 28, 2000	626
106–253	Semipostal Authorization Act	July 28, 2000	634
106–254	Federal Law Enforcement Animal Protection Act of 2000	Aug. 2, 2000	638
106–255	Cross-Border Cooperation and Environmental Safety in Northern Europe Act of 2000	Aug. 2, 2000	639
106–256	Oceans Act of 2000	Aug. 7, 2000	644
106–257	Oregon Land Exchange Act of 2000	Aug. 8, 2000	650

Public Law	Title	Approved	114 Stat.
106–258	To amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York.	Aug. 8, 2000	655
106–259	Department of Defense Appropriations Act, 2001	Aug. 9, 2000	656
106–260	Tribal Self-Governance Amendments of 2000	Aug. 18, 2000	711
106–261	To designate Wilson Creek in Avery and Caldwell Counties, North Carolina, as a component of the National Wild and Scenic Rivers System.	Aug. 18, 2000	735
106–262	To name the Department of Veterans Affairs outpatient clinic in Rome, New York, as the ''Donald J. Mitchell Department of Veterans Affairs Outpatient Clinic''.	Aug. 18, 2000	736
106–263	Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act	Aug. 18, 2000	737
106–264	Global AIDS and Tuberculosis Relief Act of 2000	Aug. 19, 2000	748
106–265	To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, provide for the correction of retirement coverage errors under chapters 83 and 84 of such title, and for other purposes.	Sept. 19, 2000	762
106–266	To designate the Federal facility located at 1301 Emmet Street in Charlottesville, Virginia, as the ''Pamela B. Gwin Hall''.	Sept. 22, 2000	787
106–267	To designate the United States border station located in Pharr, Texas, as the ''Kika de la Garza United States Border Station''.	Sept. 22, 2000	788
106–268	To designate the Federal building located at 643 East Durango Boulevard in San Antonio, Texas, as the ''Adrian A. Spears Judicial Training Center''.	Sept. 22, 2000	789
106–269	To designate the United States courthouse located at 220 West Depot Street in Greeneville, Tennessee, as the ''James H. Quillen United States Courthouse''.	Sept. 22, 2000	790
106–270	Deschutes Resources Conservancy Reauthorization Act of 2000	Sept. 22, 2000	791
106–271	Corinth Battlefield Preservation Act of 2000	Sept. 22, 2000	792
106–272	Jackson Multi-Agency Campus Act of 2000	Sept. 22, 2000	797
106–273	To amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for sales of electricity by the Bonneville Power Administration to joint operating entities.	Sept. 22, 2000	802
106–274	Religious Land Use and Institutionalized Persons Act of 2000	Sept. 22, 2000	803
106–275	Making continuing appropriations for the fiscal year 2001, and for other purposes	Sept. 29, 2000	808
106–276	To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty.	Oct. 2, 2000	812
106–277	To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes.	Oct. 2, 2000	813
106–278	To designate the Lackawanna Valley and the Schuylkill River National Heritage Areas, and for other purposes.	Oct. 6, 2000	814
106–279	Intercountry Adoption Act of 2000	Oct. 6, 2000	825
106–280	Security Assistance Act of 2000	Oct. 6, 2000	845
106–281	FHA Downpayment Simplification Extension Act of 2000	Oct. 6, 2000	865
106–282	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 6, 2000	866
106–283	Kake Tribal Corporation Land Transfer Act	Oct. 6, 2000	867
106–284	Beaches Environmental Assessment and Coastal Health Act of 2000	Oct. 10, 2000	870
106–285	To amend the Act entitled ''An Act relating to the water rights of the Ak-Chin Indian Community'' to clarify certain provisions concerning the leasing of such water rights, and for other purposes.	Oct. 10, 2000	878
106–286	To authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China.	Oct. 10, 2000	880
106–287	To grant the consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact.	Oct. 10, 2000	909
106–288	Granting the consent of the Congress to the Red River Boundary Compact	Oct. 10, 2000	919
106–289	To designate the United States Post Office located at 3813 Main Street in East Chicago, Indiana, as the ''Lance Corporal Harold Gomez Post Office''.	Oct. 10, 2000	920
106–290	To expand the boundaries of the Gettysburg National Military Park to include the Wills House, and for other purposes.	Oct. 10, 2000	921
106–291	Department of the Interior and Related Agencies Appropriations Act, 2001	Oct. 11, 2000	922
106–292	To authorize appropriations for the United States Holocaust Memorial Museum, and for other purposes.	Oct. 12, 2000	1030
106–293	Presidential Transition Act of 2000	Oct. 12, 2000	1035
106–294	Federal Prisoner Health Care Copayment Act of 2000	Oct. 12, 2000	1038
106–295	To designate the bridge on United States Route 231 that crosses the Ohio River between Maceo, Kentucky, and Rockport, Indiana, as the ''William H. Natcher Bridge''.	Oct. 13, 2000	1043
106–296	To designate the Federal building and United States courthouse located at 402 North Walnut Street in Harrison, Arkansas, as the ''J. Smith Henley Federal Building and United States Courthouse''.	Oct. 13, 2000	1044
106–297	Death in Custody Reporting Act of 2000	Oct. 13, 2000	1045
106–298	Lincoln County Land Act of 2000	Oct. 13, 2000	1046
106–299	Wekiva Wild and Scenic River Act of 2000	Oct. 13, 2000	1050
106–300	Red River National Wildlife Refuge Act	Oct. 13, 2000	1055
106–301	Utah West Desert Land Exchange Act of 2000	Oct. 13, 2000	1059
106–302	To extend the authorization for the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs.	Oct. 13, 2000	1062
106–303	To make certain personnel flexibilities available with respect to the General Accounting Office, and for other purposes.	Oct. 13, 2000	1063
106–304	To designate the Federal building located at 1710 Alabama Avenue in Jasper, Alabama, as the ''Carl Elliott Federal Building''.	Oct. 13, 2000	1071
106–305	To designate the United States customhouse located at 101 East Main Street in Norfolk, Virginia, as the ''Owen B. Pickett United States Customhouse''.	Oct. 13, 2000	1072
106–306	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 13, 2000	1073
106–307	El Camino Real de Tierra Adentro National Historic Trail Act	Oct. 13, 2000	1074

Public Law	Title	Approved	114 Stat.
106–308	To designate the Federal courthouse at 145 East Simpson Avenue in Jackson, Wyoming, as the ''Clifford P. Hansen Federal Courthouse''.	Oct. 13, 2000	1077
106–309	Microenterprise for Self-Reliance and International Anti-Corruption Act of 2000	Oct. 17, 2000	1078
106–310	Children's Health Act of 2000	Oct. 17, 2000	1101
106–311	To increase the amount of fees charged to employers who are petitioners for the employment of H-1B non-immigrant workers, and for other purposes.	Oct. 17, 2000	1247
106–312	Truth in Regulating Act of 2000	Oct. 17, 2000	1248
106–313	To amend the Immigration and Nationality Act with respect to H-1B nonimmigrant aliens	Oct. 17, 2000	1251
106–314	Strengthening Abuse and Neglect Courts Act of 2000	Oct. 17, 2000	1266
106–315	To designate the building of the United States Postal Service located at 307 Main Street in Johnson City, New York, as the ''James W. McCabe, Sr. Post Office Building''.	Oct. 19, 2000	1275
106–316	To reauthorize the Junior Duck Stamp Conservation and Design Program Act of 1994.	Oct. 19, 2000	1276
106–317	To make technical corrections to title X of the Energy Policy Act of 1992	Oct. 19, 2000	1277
106–318	Taunton River Wild and Scenic River Study Act of 2000	Oct. 19, 2000	1278
106–319	Yuma Crossing National Heritage Area Act of 2000	Oct. 19, 2000	1280
106–320	To designate the facility of the United States Postal Service located at 424 South Michigan Street in South Bend, Indiana, as the ''John Brademas Post Office''.	Oct. 19, 2000	1286
106–321	To designate the facility of the United States Postal Service located at 757 Warren Road in Ithaca, New York, as the ''Matthew F. McHugh Post Office''.	Oct. 19, 2000	1287
106–322	To designate the United States post office located at 451 College Street in Macon, Georgia, as the ''Henry McNeal Turner Post Office''.	Oct. 19, 2000	1288
106–323	Effigy Mounds National Monument Additions Act	Oct. 19, 2000	1289
106–324	To dedicate the Big South Trail in the Comanche Peak Wilderness Area of Roosevelt National Forest in Colorado to the legacy of Jaryd Atadero.	Oct. 19, 2000	1291
106–325	To designate the facility of the United States Postal Service located at 4601 South Cottage Grove Avenue in Chicago, Illinois, as the ''Henry W. McGee Post Office Building''.	Oct. 19, 2000	1292
106–326	To redesignate the facility of the United States Postal Service located at 14900 Southwest 30th Street in Miramar, Florida, as the ''Vicki Coceano Post Office Building''.	Oct. 19, 2000	1293
106–327	To designate the facility of the United States Postal Service located at 600 Lincoln Avenue in Pasadena, California, as the ''Matthew 'Mack' Robinson Post Office Building''.	Oct. 19, 2000	1294
106–328	To designate the facility of the United States Postal Service located at 2000 Vassar Street in Reno, Nevada, as the ''Barbara F. Vucanovich Post Office Building''.	Oct. 19, 2000	1295
106–329	Black Hills National Forest and Rocky Mountain Research Station Improvement Act	Oct. 19, 2000	1296
106–330	Texas National Forests Improvement Act of 2000	Oct. 19, 2000	1299
106–331	Cahaba River National Wildlife Refuge Establishment Act	Oct. 19, 2000	1303
106–332	To clarify certain boundaries on the map relating to Unit NC-01 of the Coastal Barrier Resources System.	Oct. 19, 2000	1306
106–333	To designate the facility of the United States Postal Service located at 919 West 34th Street in Baltimore, Maryland, as the ''Samuel H. Lacy, Sr. Post Office Building''.	Oct. 19, 2000	1307
106–334	To designate the facility of the United States Postal Service located at 3500 Dolfield Avenue in Baltimore, Maryland, as the ''Judge Robert Bernard Watts, Sr. Post Office Building''.	Oct. 19, 2000	1308
106–335	To designate the facility of the United States Postal Service located at 1908 North Ellamont Street in Baltimore, Maryland, as the ''Dr. Flossie McClain Dedmond Post Office Building''.	Oct. 19, 2000	1309
106–336	To designate the facility of the United States Postal Service located at 500 North Washington Street in Rockville, Maryland, as the ''Everett Alvarez, Jr. Post Office Building''.	Oct. 19, 2000	1310
106–337	To designate the facility of the United States Postal Service located at 24 Tsienneto Road in Derry, New Hampshire, as the ''Alan B. Shepard, Jr. Post Office Building''.	Oct. 19, 2000	1311
106–338	To redesignate the facility of the United States Postal Service located at 114 Ridge Street, N.W. in Lenoir, North Carolina, as the ''James T. Broyhill Post Office Building''.	Oct. 19, 2000	1312
106–339	To redesignate the facility of the United States Postal Service located at 1602 Frankford Avenue in Philadelphia, Pennsylvania, as the ''Joseph F. Smith Post Office Building''.	Oct. 19, 2000	1313
106–340	To redesignate the facility of the United States Postal Service located at 3030 Meredith Avenue in Omaha, Nebraska, as the ''Reverend J.C. Wade Post Office''.	Oct. 19, 2000	1314
106–341	To designate the facility of the United States Postal Service located at 301 Green Street in Fayetteville, North Carolina, as the ''J.L. Dawkins Post Office Building''.	Oct. 19, 2000	1315
106–342	To redesignate the facility of the United States Postal Service located at 200 West 2nd Street in Royal Oak, Michigan, as the ''William S. Broomfield Post Office Building''.	Oct. 19, 2000	1316
106–343	To extend the deadline under the Federal Power Act for commencement of the construction of the Arrowrock Dam Hydroelectric Project in the State of Idaho.	Oct. 19, 2000	1317
106–344	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 20, 2000	1318
106–345	Ryan White CARE Act Amendments of 2000	Oct. 20, 2000	1319
106–346*	Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes.	Oct. 23, 2000	1356
106–347	To designate the post office and courthouse located at 2 Federal Square, Newark, New Jersey, as the ''Frank R. Lautenberg Post Office and Courthouse''.	Oct. 23, 2000	1357
106–348	To authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.	Oct. 24, 2000	1358
106–349	Carter G. Woodson Home National Historic Site Study Act of 2000	Oct. 24, 2000	1359
106–350	Golden Gate National Recreation Area Boundary Adjustment Act of 2000	Oct. 24, 2000	1361
106–351	Santa Rosa and San Jacinto Mountains National Monument Act of 2000	Oct. 24, 2000	1362
106–352	Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000.	Oct. 24, 2000	1370
106–353	Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000.	Oct. 24, 2000	1374
106–354	Breast and Cervical Cancer Prevention and Treatment Act of 2000	Oct. 24, 2000	1381
106–355	National Historic Lighthouse Preservation Act of 2000	Oct. 24, 2000	1385
106–356	Dayton Aviation Heritage Preservation Amendments Act of 2000	Oct. 24, 2000	1391
106–357	White Clay Creek Wild and Scenic Rivers System Act	Oct. 24, 2000	1393
106–358	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 26, 2000	1397
106–359	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 26, 2000	1398

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106–360	To direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System.	Oct. 27, 2000	1399
106–361	To amend title 5, United States Code, to allow for the contribution of certain rollover distributions to accounts in the Thrift Savings Plan, to eliminate certain waiting-period requirements for participating in the Thrift Savings Plan, and for other purposes.	Oct. 27, 2000	1400
106–362	Ivanpah Valley Airport Public Lands Transfer Act	Oct. 27, 2000	1404
106–363	To extend and reauthorize the Defense Production Act of 1950	Oct. 27, 2000	1407
106–364	To amend the Revised Organic Act of the Virgin Islands to provide that the number of members on the legislature of the Virgin Islands and the number of such members constituting a quorum shall be determined by the laws of the Virgin Islands, and for other purposes.	Oct. 27, 2000	1408
106–365	To provide for the placement at the Lincoln Memorial of a plaque commemorating the speech of Martin Luther King, Jr., known as the ''I Have A Dream'' speech.	Oct. 27, 2000	1409
106–366	To direct the Secretary of the Interior, through the Bureau of Reclamation, to convey to the Loup Basin Reclamation District, the Sargent River Irrigation District, and the Farwell Irrigation District, Nebraska, property comprising the assets of the Middle Loup Division of the Missouri River Basin Project, Nebraska.	Oct. 27, 2000	1410
106–367	National Police Athletic League Youth Enrichment Act of 2000	Oct. 27, 2000	1412
106–368	To authorize the Secretary of the Interior to enter into contracts with the Weber Basin Water Conservancy District, Utah, to use Weber Basin Project facilities for the impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes.	Oct. 27, 2000	1416
106–369	Cat Island National Wildlife Refuge Establishment Act	Oct. 27, 2000	1417
106–370	Duchesne City Water Rights Conveyance Act	Oct. 27, 2000	1421
106–371	To increase the amount authorized to be appropriated for the north side pumping division of the Minidoka reclamation project, Idaho.	Oct. 27, 2000	1424
106–372	To provide for a study of the engineering feasibility of a water exchange in lieu of electrification of the Chandler Pumping Plant at Prosser Diversion Dam, Washington.	Oct. 27, 2000	1425
106–373	Famine Prevention and Freedom From Hunger Improvement Act of 2000	Oct. 27, 2000	1427
106–374	To reauthorize grants for water resources research and technology institutes established under the Water Resources Research Act of 1984.	Oct. 27, 2000	1434
106–375	National Museum of the American Indian Commemorative Coin Act of 2000	Oct. 27, 2000	1435
106–376	To direct the Secretary of the Interior to convey certain water distribution facilities to the Northern Colorado Water Conservancy District.	Oct. 27, 2000	1439
106–377*	Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2001, and for other purposes.	Oct. 27, 2000	1441
106–378	To provide for the adjustment of status of certain Syrian nationals	Oct. 27, 2000	1442
106–379	Work Made For Hire and Copyright Corrections Act of 2000	Oct. 27, 2000	1444
106–380	Veterans' Oral History Project Act	Oct. 27, 2000	1447
106–381	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 27, 2000	1450
106–382	Fort Peck Reservation Rural Water System Act of 2000	Oct. 27, 2000	1451
106–383	To authorize the Smithsonian Institution to plan, design, construct, and equip laboratory, administrative, and support space to house base operations for the Smithsonian Astrophysical Observatory Submillimeter Array located on Mauna Kea at Hilo, Hawaii.	Oct. 27, 2000	1459
106–384	To amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes.	Oct. 27, 2000	1460
106–385	To rename the National Museum of American Art	Oct. 27, 2000	1463
106–386	Victims of Trafficking and Violence Protection Act of 2000	Oct. 28, 2000	1464
106–387*	Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2001, and for other purposes.	Oct. 28, 2000	1549
106–388	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 28, 2000	1550
106–389	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 29, 2000	1551
106–390	Disaster Mitigation Act of 2000	Oct. 30, 2000	1552
106–391	National Aeronautics and Space Administration Authorization Act of 2000	Oct. 30, 2000	1577
106–392	To authorize the Bureau of Reclamation to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.	Oct. 30, 2000	1602
106–393	Secure Rural Schools and Community Self-Determination Act of 2000	Oct. 30, 2000	1607
106–394	Federal Employees Health Benefits Children's Equity Act of 2000	Oct. 30, 2000	1629
106–395	Child Citizenship Act of 2000	Oct. 30, 2000	1631
106–396	Visa Waiver Permanent Program Act	Oct. 30, 2000	1637
106–397	District of Columbia Receivership Accountability Act of 2000	Oct. 30, 2000	1651
106–398*	To authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.	Oct. 30, 2000	1654
106–399	Steens Mountain Cooperative Management and Protection Act of 2000	Oct. 30, 2000	1655
106–400	To rename the Stewart B. McKinney Homeless Assistance Act as the ''McKinney-Vento Homeless Assistance Act''.	Oct. 30, 2000	1675
106–401	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Oct. 30, 2000	1676
106–402	Developmental Disabilities Assistance and Bill of Rights Act of 2000	Oct. 30, 2000	1677
106–403	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 1, 2000	1741
106–404	Technology Transfer Commercialization Act of 2000	Nov. 1, 2000	1742
106–405	Commercial Space Transportation Competitiveness Act of 2000	Nov. 1, 2000	1751
106–406	International Patient Act of 2000	Nov. 1, 2000	1755
106–407	Southeast Federal Center Public-Private Development Act of 2000	Nov. 1, 2000	1758
106–408	Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000.	Nov. 1, 2000	1762
106–409	Religious Workers Act of 2000	Nov. 1, 2000	1787
106–410	To amend title 44, United States Code, to authorize appropriations for the National Historical Publications and Records Commission for fiscal years 2002 through 2005.	Nov. 1, 2000	1788
106–411	Great Ape Conservation Act of 2000	Nov. 1, 2000	1789

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106–412	To authorize the exchange of land between the Secretary of the Interior and the Director of Central Intelligence at the George Washington Memorial Parkway in McLean, Virginia, and for other purposes.	Nov. 1, 2000	1795
106–413	Veterans' Compensation Cost-of-Living Adjustment Act of 2000	Nov. 1, 2000	1798
106–414	Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act	Nov. 1, 2000	1800
106–415	To amend the Hmong Veterans' Naturalization Act of 2000 to extend the applicability of that Act to certain former spouses of deceased Hmong veterans..	Nov. 1, 2000	1810
106–416	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 1, 2000	1811
106–417	Alaska Native and American Indian Direct Reimbursement Act of 2000	Nov. 1, 2000	1812
106–418	Lower Delaware Wild and Scenic Rivers Act	Nov. 1, 2000	1817
106–419	Veterans Benefits and Health Care Improvement Act of 2000	Nov. 1, 2000	1822
106–420	College Scholarship Fraud Prevention Act of 2000	Nov. 1, 2000	1867
106–421	Castle Rock Ranch Acquisition Act of 2000	Nov. 1, 2000	1870
106–422	To amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide that certain designated Federal entities shall be establishments under such Act, and for other purposes.	Nov. 1, 2000	1872
106–423	Timbisha Shoshone Homeland Act	Nov. 1, 2000	1875
106–424	National Transportation Safety Board Amendments Act of 2000	Nov. 1, 2000	1883
106–425	Santo Domingo Pueblo Claims Settlement Act of 2000	Nov. 1, 2000	1890
106–426	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 3, 2000	1897
106–427	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 4, 2000	1898
106–428	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 4, 2000	1899
106–429*	Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes.	Nov. 6, 2000	1900
106–430	Needlestick Safety and Prevention Act	Nov. 6, 2000	1901
106–431	Saint Helena Island National Scenic Area Act	Nov. 6, 2000	1905
106–432	Miwaleta Park Expansion Act	Nov. 6, 2000	1908
106–433	Social Security Number Confidentiality Act of 2000	Nov. 6, 2000	1910
106–434	To provide for the conveyance of a small parcel of public domain land in the San Bernardino National Forest in the State of California, and for other purposes.	Nov. 6, 2000	1912
106–435	2002 Winter Olympic Commemorative Coin Act	Nov. 6, 2000	1916
106–436	To designate the facility of the United States Postal Service located at 3695 Green Road in Beachwood, Ohio, as the ''Larry Small Post Office Building''.	Nov. 6, 2000	1919
106–437	To permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision when required by State law, and for other purposes.	Nov. 6, 2000	1920
106–438	To designate the facility of the United States Postal Service located at 900 East Fayette Street in Baltimore, Maryland, as the ''Judge Harry Augustus Cole Post Office Building''.	Nov. 6, 2000	1922
106–439	To designate the facility of the United States Postal Service located at 1001 Frederick Road in Baltimore, Maryland, as the ''Frederick L. Dewberry, Jr. Post Office Building''.	Nov. 6, 2000	1923
106–440	To designate the facility of the United States Postal Service located at 2108 East 38th Street in Erie, Pennsylvania, as the ''Gertrude A. Barber Post Office Building''.	Nov. 6, 2000	1924
106–441	To designate the facility of the United States Postal Service located at 110 Postal Way in Carrollton, Georgia, as the ''Samuel P. Roberts Post Office Building''.	Nov. 6, 2000	1925
106–442	To amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work.	Nov. 6, 2000	1926
106–443	To extend the authority of the Los Angeles Unified School District to use certain park lands in the City of South Gate, California, which were acquired with amounts provided from the land and water conservation fund, for elementary school purposes.	Nov. 6, 2000	1927
106–444	Freedmen's Bureau Records Preservation Act of 2000	Nov. 6, 2000	1929
106–445	United States Mint Numismatic Coin Clarification Act of 2000	Nov. 6, 2000	1931
106–446	To amend title 10, United States Code, to facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs.	Nov. 6, 2000	1932
106–447	Indian Tribal Regulatory Reform and Business Development Act of 2000	Nov. 6, 2000	1934
106–448	To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities..	Nov. 6, 2000	1939
106–449	To modify the date on which the Mayor of the District of Columbia submits a performance accountability plan to Congress, and for other purposes.	Nov. 6, 2000	1940
106–450	To amend the Fishermen's Protective Act of 1967 to extend the period during which reimbursement may be provided to owners of United States fishing vessels for costs incurred when such a vessel is seized and detained by a foreign country, and for other purposes.	Nov. 7, 2000	1941
106–451	Wartime Violation of Italian American Civil Liberties Act	Nov. 7, 2000	1947
106–452	To redesignate the facility of the United States Postal Service located at 2339 North California Avenue in Chicago, Illinois, as the ''Roberto Clemente Post Office''.	Nov. 7, 2000	1950
106–453	To redesignate the facility of the United States Postal Service located at 1568 South Green Road in South Euclid, Ohio, as the ''Arnold C. D'Amico Station''.	Nov. 7, 2000	1951
106–454	To designate the facility of the United States Postal Service located at 219 South Church Street in Odum, Georgia, as the ''Ruth Harris Coleman Post Office Building''.	Nov. 7, 2000	1952
106–455	Glacier Bay National Park Resource Management Act of 2000	Nov. 7, 2000	1953
106–456	Spanish Peaks Wilderness Act of 2000	Nov. 7, 2000	1955
106–457	Estuaries and Clean Waters Act of 2000	Nov. 7, 2000	1957
106–458	Arizona National Forest Improvement Act of 2000	Nov. 7, 2000	1983
106–459	To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.	Nov. 7, 2000	1987
106–460	To direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes.	Nov. 7, 2000	1988
106–461	Hoover Dam Miscellaneous Sales Act	Nov. 7, 2000	1989
106–462	Indian Land Consolidation Act Amendments of 2000	Nov. 7, 2000	1991
106–463	Coal Market Competition Act of 2000	Nov. 7, 2000	2010
106–464	Native American Business Development, Trade Promotion, and Tourism Act of 2000	Nov. 7, 2000	2012
106–465	Sand Creek Massacre National Historic Site Establishment Act of 2000	Nov. 7, 2000	2019

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106–466	Nampa and Meridian Conveyance Act	Nov. 7, 2000	2024
106–467	To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes.	Nov. 9, 2000	2026
106–468	Kristen's Act	Nov. 9, 2000	2027
106–469	Energy Act of 2000	Nov. 9, 2000	2029
106–470	Upper Housatonic National Heritage Area Study Act of 2000	Nov. 9, 2000	2055
106–471	To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas.	Nov. 9, 2000	2057
106–472	Grain Standards and Warehouse Improvement Act of 2000	Nov. 9, 2000	2058
106–473	Washington-Rochambeau Revolutionary Route National Heritage Act of 2000	Nov. 9, 2000	2083
106–474	National Recording Preservation Act of 2000	Nov. 9, 2000	2085
106–475	Veterans Claims Assistance Act of 2000	Nov. 9, 2000	2096
106–476	Tariff Suspension and Trade Act of 2000	Nov. 9, 2000	2101
106–477	To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the ''George E. Brown, Jr. United States Courthouse''.	Nov. 9, 2000	2182
106–478	To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the ''William Kenzo Nakamura United States Courthouse''.	Nov. 9, 2000	2183
106–479	To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass.	Nov. 9, 2000	2184
106–480	To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the ''Herbert H. Bateman Education and Administrative Center''.	Nov. 9, 2000	2186
106–481	Library of Congress Fiscal Operations Improvement Act of 2000	Nov. 9, 2000	2187
106–482	To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land.	Nov. 9, 2000	2192
106–483	Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes.	Nov. 9, 2000	2193
106–484	Bring Them Home Alive Act of 2000	Nov. 9, 2000	2195
106–485	To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes.	Nov. 9, 2000	2199
106–486	To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes.	Nov. 9, 2000	2201
106–487	Vicksburg Campaign Trail Battlefields Preservation Act of 2000	Nov. 9, 2000	2202
106–488	To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes.	Nov. 9, 2000	2205
106–489	To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels.	Nov. 9, 2000	2207
106–490	To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws.	Nov. 9, 2000	2208
106–491	To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes.	Nov. 9, 2000	2209
106–492	National Law Enforcement Museum Act	Nov. 9, 2000	2210
106–493	To provide for equal exchanges of land around the Cascade Reservoir	Nov. 9, 2000	2213
106–494	To provide for the conveyance of certain land to Park County, Wyoming	Nov. 9, 2000	2214
106–495	To permit the conveyance of certain land in Powell, Wyoming	Nov. 9, 2000	2216
106–496	Bend Feed Canal Pipeline Project Act of 2000	Nov. 9, 2000	2218
106–497	Indian Arts and Crafts Enforcement Act of 2000	Nov. 9, 2000	2219
106–498	Klamath Basin Water Supply Enhancement Act of 2000	Nov. 9, 2000	2221
106–499	To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River.	Nov. 9, 2000	2223
106–500	To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles.	Nov. 9, 2000	2224
106–501	Older Americans Act Amendments of 2000	Nov. 13, 2000	2226
106–502	Fisheries Restoration and Irrigation Mitigation Act of 2000	Nov. 13, 2000	2294
106–503	To authorize appropriations for the United States Fire Administration, and for carrying out the Earthquake Hazards Reduction Act of 1977, for fiscal years 2001, 2002, and 2003, and for other purposes.	Nov. 13, 2000	2298
106–504	To amend the Organic Act of Guam, and for other purposes	Nov. 13, 2000	2309
106–505	Public Health Improvement Act	Nov. 13, 2000	2314
106–506	Lake Tahoe Restoration Act	Nov. 13, 2000	2351
106–507	To provide for the posthumous promotion of William Clark of the Commonwealth of Virginia and the Commonwealth of Kentucky, co-leader of the Lewis and Clark Expedition, to the grade of captain in the Regular Army.	Nov. 13, 2000	2359
106–508	To provide for increased penalties for violations of the Export Administration Act of 1979, and for other purposes.	Nov. 13, 2000	2360
106–509	Ala Kahakai National Historic Trail Act	Nov. 13, 2000	2361
106–510	Hawaii Volcanoes National Park Adjustment Act of 2000	Nov. 13, 2000	2363
106–511	To provide for equitable compensation for the Cheyenne River Sioux Tribe, and for other purposes.	Nov. 13, 2000	2365
106–512	Palmetto Bend Conveyance Act	Nov. 13, 2000	2378
106–513	National Marine Sanctuaries Amendments Act of 2000	Nov. 13, 2000	2381
106–514	Coastal Barrier Resources Reauthorization Act of 2000	Nov. 13, 2000	2394
106–515	America's Law Enforcement and Mental Health Project	Nov. 13, 2000	2399
106–516	Harriet Tubman Special Resource Study Act	Nov. 13, 2000	2404

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106–517	Bulletproof Vest Partnership Grant Act of 2000	Nov. 13, 2000	2407
106–518	Federal Courts Improvement Act of 2000	Nov. 13, 2000	2410
106–519	FSC Repeal and Extraterritorial Income Exclusion Act of 2000	Nov. 15, 2000	2423
106–520	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Nov. 15, 2000	2436
106–521	To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment.	Nov. 22, 2000	2438
106–522	District of Columbia Appropriations Act, 2001	Nov. 22, 2000	2440
106–523	Military Extraterritorial Jurisdiction Act of 2000	Nov. 22, 2000	2488
106–524	To revise the boundary of Fort Matanzas National Monument, and for other purposes	Nov. 22, 2000	2493
106–525	Minority Health and Health Disparities Research and Education Act of 2000	Nov. 22, 2000	2495
106–526	Bend Pine Nursery Land Conveyance Act	Nov. 22, 2000	2512
106–527	To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes	Nov. 22, 2000	2515
106–528	Airport Security Improvement Act of 2000	Nov. 22, 2000	2517
106–529	Saint Croix Island Heritage Act	Nov. 22, 2000	2524
106–530	Great Sand Dunes National Park and Preserve Act of 2000	Nov. 22, 2000	2527
106–531	Reports Consolidation Act of 2000	Nov. 22, 2000	2537
106–532	Dairy Market Enhancement Act of 2000	Nov. 22, 2000	2541
106–533	To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board.	Nov. 22, 2000	2545
106–534	Protecting Seniors From Fraud Act	Nov. 22, 2000	2555
106–535	To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the ''Robert S. Walker Post Office''.	Nov. 22, 2000	2559
106–536	To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees.	Nov. 22, 2000	2560
106–537	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Dec. 5, 2000	2562
106–538	To establish the Las Cienegas National Conservation Area in the State of Arizona	Dec. 6, 2000	2563
106–539	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Dec. 7, 2000	2570
106–540	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Dec. 8, 2000	2571
106–541	Water Resources Development Act of 2000	Dec. 11, 2000	2572
106–542	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Dec. 11, 2000	2713
106–543	Making further continuing appropriations for the fiscal year 2001, and for other purposes	Dec. 15, 2000	2714
106–544	Presidential Threat Protection Act of 2000	Dec. 19, 2000	2715
106–545	ICCVAM Authorization Act of 2000	Dec. 19, 2000	2721
106–546	DNA Analysis Backlog Elimination Act of 2000	Dec. 19, 2000	2726
106–547	Enhanced Federal Security Act of 2000	Dec. 19, 2000	2738
106–548	To direct the Secretary of Agriculture to convey to the town of Dolores, Colorado, the current site of the Joe Rowell Park.	Dec. 19, 2000	2741
106–549	To authorize the Secretary of the Interior to contract with the Mancos Water Conservancy District to use the Mancos Project facilities for impounding, storage, diverting, and carriage of nonproject water for the purpose of irrigation, domestic, municipal, industrial, and any other beneficial purposes.	Dec. 19, 2000	2743
106–550	James Madison Commemoration Commission Act	Dec. 19, 2000	2745
106–551	Chimpanzee Health Improvement, Maintenance, and Protection Act	Dec. 20, 2000	2752
106–552	To redesignate the facility of the United States Postal Service located at 514 Express Center Road in Chicago, Illinois, as the ''J.T. Weeker Service Center''.	Dec. 20, 2000	2761
106–553*	Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2001, and for other purposes.	Dec. 21, 2000	2762
106–554*	Consolidated Appropriations Act, 2001	Dec. 21, 2000	2763
106–555	Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000.	Dec. 21, 2000	2765
106–556	To designate the facility of the United States Postal Service located at 200 South George Street in York, Pennsylvania, as the ''George Atlee Goodling Post Office Building''.	Dec. 21, 2000	2771
106–557	Shark Finning Prohibition Act	Dec. 21, 2000	2772
106–558	To amend the National Forest and Public Lands of Nevada Enhancement Act of 1988 to adjust the boundary of the Toiyabe National Forest, Nevada, and to amend chapter 55 of title 5, United States Code, to authorize equal overtime pay provisions for all Federal employees engaged in wildland fire suppression operations.	Dec. 21, 2000	2776
106–559	Indian Tribal Justice Technical and Legal Assistance Act of 2000	Dec. 21, 2000	2778
106–560	Interstate Transportation of Dangerous Criminals Act of 2000	Dec. 21, 2000	2784
106–561	Paul Coverdell National Forensic Sciences Improvement Act of 2000	Dec. 21, 2000	2787
106–562	To complete the orderly withdrawal of the NOAA from the civil administration of the Pribilof Islands, Alaska, and to assist in the conservation of coral reefs, and for other purposes.	Dec. 23, 2000	2794
106–563	Lincoln Highway Study Act of 2000	Dec. 23, 2000	2809
106–564	To establish a standard time zone for Guam and the Commonwealth of the Northern Mariana Islands, and for other purposes.	Dec. 23, 2000	2811
106–565	Jamestown 400th Commemoration Commission Act of 2000	Dec. 23, 2000	2812
106–566	To direct the Secretary of the Interior to conduct a study on the reclamation and reuse of water and wastewater in the State of Hawaii, and for other purposes.	Dec. 23, 2000	2818
106–567	Intelligence Authorization Act for Fiscal Year 2001	Dec. 27, 2000	2831
106–568	Omnibus Indian Advancement Act	Dec. 27, 2000	2868
106–569	American Homeownership and Economic Opportunity Act of 2000	Dec. 27, 2000	2944
106–570	Assistance for International Malaria Control Act	Dec. 27, 2000	3038
106–571	Federal Physicians Comparability Allowance Amendments of 2000	Dec. 28, 2000	3054
106–572	Computer Crime Enforcement Act	Dec. 28, 2000	3058
106–573	Installment Tax Correction Act of 2000	Dec. 28, 2000	3061
106–574	To authorize the addition of land to Sequoia National Park, and for other purposes	Dec. 28, 2000	3062
106–575	To authorize the Forest Service to convey certain lands in the Lake Tahoe Basin to the Washoe County School District for use as an elementary school site.	Dec. 28, 2000	3063
106–576	Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000	Dec. 28, 2000	3065

Public Law	Title	Approved	114 Stat.
106–577	To establish the California Trail Interpretive Center in Elko, Nevada, to facilitate the interpretation of the history of development and use of trails in the settling of the western portion of the United States, and for other purposes.	Dec. 28, 2000	3068
106–578	Internet False Identification Prevention Act of 2000	Dec. 28, 2000	3075
106–579	National Moment of Remembrance Act	Dec. 28, 2000	3078
106–580	National Institute of Biomedical Imaging and Bioengineering Establishment Act	Dec. 29, 2000	3088

***Note:** Public Laws 106–346, 377, 387, 398, 429, 553, and 554 will contain appendixes which incorporate the text of certain bills that have been enacted into law by reference.

Federal Register

Tuesday,
January 16, 2001

Part III

Department of the Interior

Fish and Wildlife Service

Draft Policy on National Wildlife Refuge System: Mission, Goals, and Purposes; Notice

Draft Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Notice

Draft Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Notice

Draft Wilderness Stewardship Policy Pursuant to the Wilderness Act of 1964; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[1018–AG46]

Draft Policy on National Wildlife Refuge System: Mission, Goals, and Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to adopt a policy articulating the mission of the National Wildlife Refuge System (System), establishing its goals, and providing guidance for identifying or determining the purpose(s) of individual refuge units within the System. We propose that this policy be incorporated into the Fish and Wildlife Service Manual. The chapter will be consistent with the principles contained within the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), as amended by the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), including recognizing the priority for management activities set forth in the NWRSIA–1997 (wildlife, wildlife-dependent uses, and other uses) in setting and achieving refuge goals and objectives.

The draft chapter also provides policy on how the purpose(s) of refuge additions relate to the original refuge purpose(s), and how wilderness designated under the Wilderness Act can affect a refuge's purpose(s). It also provides a decision-tree for how to determine refuge purpose(s) from existing documentation.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: Send comments concerning this draft policy via mail, fax, or email to: Barry Stieglitz, Acting Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, Virginia, 22203; fax (703) 358–2248; email Mission_And_Goals_Policy_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Barry Stieglitz, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 (Pub. L. 105–57) amends and builds upon the NWRSAA–1966 (16 U.S.C. 668dd–668ee), providing an ''Organic Act'' for the System. It clearly establishes that wildlife conservation is the singular mission of the System and affirms the importance of refuge purposes as they relate to the broader System mission. It states that we shall manage each refuge to fulfill the mission of the System, as well as the specific purpose(s) for which that refuge was established.

The NWRSIA–1997 also provides a clear hierarchy of activities: wildlife conservation, wildlife-dependent recreational uses, and other uses. This chapter reinforces this hierarchy and allows us to articulate our goals for the System, given the direction this new legislation provides. We will incorporate this chapter in the Service Manual as 601 FW 1, replacing 2 RM 1 ''Objectives of the National Wildlife Refuge System,'' which has been in effect since 1982. The complete text of the policy concludes this document, but the following is a overview of the chapter.

Overview of the Draft National Wildlife Refuge System: Mission, Goals, and Purposes Policy

Section 1.1 presents the purpose of the chapter.

Section 1.2 explains that this chapter applies to national wildlife refuges, waterfowl production areas, and coordination areas, which are all units of the System. It does not apply to administrative sites or national fish hatcheries.

Section 1.3 describes how the System mission and goals, and individual unit purposes relate to each other. It reiterates the NWRSIA–1997 language that clearly provides for a unit's purpose(s) to receive priority over the System mission, should there be a conflict between the two.

Section 1.4 describes the mission of the System.

Section 1.5 describes how the System mission relates to the Service mission. The network of lands and waters within the System clearly supports the Service mission of ''* * * working with others, to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.''

Section 1.6 lists the goals of the System. These are:

A. To fulfill our statutory duty to achieve refuge purpose(s) and further the System mission;

B. Conserve, restore where appropriate, and enhance all species of fish, wildlife, and plants that are endangered or threatened with becoming endangered;

C. Perpetuate migratory bird, interjurisdictional fish, and marine mammal populations;

D. Conserve a diversity of fish, wildlife, and plants;

E. Conserve and restore as appropriate representative ecosystems of the United States, including the ecological processes characteristic of those ecosystems; and

F. To foster understanding and instill appreciation of native fish, wildlife, and plants, and their conservation, by providing the public with safe, high-quality, and compatible wildlife-dependent public use. Such use includes hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Section 1.7 describes each of these goals in more detail and justification for why each goal is appropriate for the System.

Section 1.8 explains the relationship the identified goals have to our management priorities. It reiterates the priorities established in the NWRSIA–1997 to be: (1) Wildlife, (2) wildlife-dependent uses, and (3) other uses.

Section 1.9 discusses how we will use these System goals to provide the philosophical foundation of the System; to consider when developing wildlife population and habitat goals and objectives; to guide the land acquisition decision-making process; and in making determinations regarding appropriate uses and compatibility.

Section 1.10 describes what a ''unit purpose'' is, quoting from the NWRSIA–1997.

Section 1.11 discusses the importance of unit purposes.

Section 1.12 gives examples of unit purposes, and explains that some may be quite broadly written, while others may have a more narrow focus.

Section 1.13 gives the references where unit purposes can be found for each unit in the System.

Section 1.14 discusses how to determine which purpose(s) take priority over others, if a particular unit has multiple purposes associated with it.

Section 1.15 discusses the relationship of purposes for additions to existing units affect the original purpose(s) of the established unit(s), and vice versa.

Section 1.16 discusses how wilderness areas designated under the Wilderness Act (16 U.S.C. 1131–1136) affect a unit's purpose(s).

Section 1.17 provides a process for determining the purpose(s) of units of the System. It is a decision-tree that guides you through establishment/authorization methods and what other references you may need when purposes have not been clearly articulated in establishment/authorization documents. It also specifies that the Director of the

Service must approve purposes in cases where establishing/authorizing documents do not articulate the purpose(s).

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Barry Stieglitz, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive—MS670, Arlington, VA 22203. You may comment via the Internet to: Mission_And_Goals _Policy_ Comments@fws.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744. You may also fax comments to: Barry Stieglitz, National Wildlife Refuge System, (703) 358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representative or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this draft policy and will take into consideration comments and any additional information received during the 60-day comment period.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of this draft Service Manual chapter to those who requested one. In addition, this draft Service Manual chapter will be available on the Internet at http://www.fws.gov/directives/library/frindex.html during the 60-day comment period.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this document is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This document will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This document is administrative and procedural in nature. This draft National Wildlife Refuge System policy provides for a hierarchy of activities and establishes the process for articulating the goals for the System. This policy will have the effect of providing priority consideration for wildlife conservation and wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation and other uses. Existing policy has been in place since 1982. The NWRSIA–1997 does not change this direction in public use, but provides legal recognition for the mission, goals, and purposes of the System. We expect this articulated policy will not cause a measurable economic effect to existing national wildlife refuge public use programs.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at national wildlife refuges to be $372.5 million in Fiscal Year 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges 1997). We expect the policy implemented in this document will not affect public uses of the Refuge System. This does not mean that every refuge will have the same public uses. Public uses of a refuge are determined when a refuge is established and after public hearings are held. Only compatible uses with the purpose of the refuge are proposed for public review and comment. This policy will provide for a unit's purposes to receive priority over System mission should there be a conflict between the two.

This document will not make changes in the amounts of public activities occurring on national wildlife refuges. There will not be a change in the total benefits of permitted public uses activities on national wildlife refuges.

b. This document will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the document pertains solely to management of national wildlife refuges by the Service.

c. This document does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This document does not raise novel legal or policy issues; however, it does provide a hierarchy of activities pursuant to the NWRSIA–1997 provisions that ensure that wildlife conservation, wildlife-dependent recreational uses and other uses are the priority public uses of the System.

Regulatory Flexibility Act

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This document is administrative and procedural in nature and provides for a hierarchy of activities on refuges: wildlife conservation, wildlife-dependent recreation and other uses. Since uses of a national wildlife refuge are determined with the establishment of the refuge, which includes public hearings, this policy will not affect public uses of refuges, and consequently, not affect any business establishments in the vicinity of any refuge.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National

Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated $401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

There are no expected changes in expenditures as a result of this document. We expect there will not be a change in recreational opportunities so we do not expect the document to have a significant economic effect on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act

This document is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This document:

a. Does not have an annual effect on the economy of $100 million or more. These regulations will affect only visitors at national wildlife refuges. They may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System. Refer to response under Regulatory Flexibility Act.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See response above.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See response above.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This document will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. See response to Regulatory Flexibility Act.

b. This document will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. See response to Regulatory Flexibility Act.

Takings

In accordance with Executive Order 12630, the document does not have significant takings implications. A takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System. Refer to response under Regulatory Flexibility Act.

Federalism

In accordance with Executive Order 13132, the document does not have significant federalism effects. This document will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this document does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the document does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will expand upon established regulations, and result in better understanding of the regulations by refuge visitors.

Paperwork Reduction Act

This document does not require an information collection from ten or more parties and a submission under the Paperwork Reduction Act of 1995 is not required.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge Comprehensive Conservation Plans and public use management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations as proposed in this document resolve a variety of issues concerning our administration of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1.10, we have determined that this document is categorically excluded from the NEPA process because it is limited to policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. In Alaska, this regulation would not apply to the development and use of Alaska Native Claims Settlement Act (ANCSA), 22(g) village lands in Alaska national wildlife refuges.

Primary Author

Brad Knudsen, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

Refuge Management—Part 601 National Wildlife Refuge System

Chapter 1 National Wildlife Refuge System Mission and Goals and Purposes 601 FW 1

1.1 *What is the purpose of this chapter?* This chapter reiterates the mission of the National Wildlife Refuge System, how it relates to the mission of the Fish and Wildlife Service, and explains the relationship of the System mission and goals, and the purpose(s) of each unit of the System. This chapter provides goals for the System and guidance for identifying or determining the purpose(s) of each unit within the System. This chapter also provides guidance on the use of goals and purposes in the administration and management of the System.

1.2 *What is the scope of this chapter?* This chapter applies to all units of the System. For purposes of this chapter, a unit of the System is defined as all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas and other areas for the protection and conservation of fish

and wildlife including those threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order.

1.3 *How do the System mission, goals, and unit purpose(s) relate to each other?* Collectively, the System mission, goals, and unit purpose(s) define the duty of the U.S. Fish and Wildlife Service in the administration and management of any unit of the System. Ideally, the System mission, goals, and unit purpose(s) are viewed as symbiotic in nature; however, priority is given to achieving a unit's purpose(s) when conflicts with the System mission or a specific goal are identified. Unit purposes form the foundation for developing goals and objectives for units during Comprehensive Conservation Plan preparation, and provide the basis for determining the appropriateness and compatibility of existing and proposed uses on units.

1.4 *What is the mission of the National Wildlife Refuge System?* The National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), as amended by the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), states the following: ''The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.''

1.5 *How does the mission of the System relate to the mission of the Service?* The mission of the Service set forth in National Policy Issuance 99–01 is: ''Our mission is working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.'' To accomplish this mission, there is a clear need for a network of lands and waters representing the diversity of landscapes and ecosystems of the United States dedicated to the conservation of fish, wildlife, and plants. While the mission of the System and purposes of individual units are paramount, it is recognized that the System contributes a vital component to the Service mission.

1.6 *What are the goals of the System?* The administration, management, and growth of the System are guided by the following goals:

A. To fulfill our statutory duty to achieve refuge purpose(s) and further the System mission.

B. Conserve, restore where appropriate, and enhance all species of fish, wildlife, and plants that are endangered or threatened with becoming endangered.

C. Perpetuate migratory bird, interjurisdictional fish, and marine mammal populations.

D. Conserve a diversity of fish, wildlife, and plants.

E. Conserve and restore where appropriate representative ecosystems of the United States, including the ecological processes characteristic of those ecosystems.

F. To foster understanding and instill appreciation of native fish, wildlife, and plants, and their conservation, by providing the public with safe, high-quality, and compatible wildlife-dependent public use. Such use includes hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

1.7 *What do these goals mean?* Goal A. The U.S. Fish and Wildlife Service is entrusted with the stewardship of America's National Wildlife Refuge System. Our first obligation in meeting that trust is the non-discretionary duty to fulfill refuge purpose(s). We may not discard that obligation in pursuit of other objectives. We may, in order to fulfill the broader System mission, and the further goals enumerated below, manage a refuge to achieve additional wildlife conservation purposes and needs, unforseen, unknown, or resulting from circumstances unanticipated at the time of refuge establishment. These additional efforts will be additive to the achievement of refuge purpose(s), which is our first and highest obligation.

Goal B. Threatened and endangered species are those listed as such by the Service or the National Marine Fisheries Service. As we manage to achieve unit purposes, we are mindful of our obligations under section 2(c)(1) of the Endangered Species Act and we strive to be a model for other Federal land management agencies in fulfilling that obligation. We protect and manage candidate and proposed species to enhance their status and help preclude the need for listing. Per Service policy [see Section 1.2(C) of the Service's ''Section 7 Consultation Handbook'', March 1998], we will consult or confer with Service Ecological Services staff on any actions authorized, funded, or carried out on System units that may affect listed, proposed, or candidate species or designated or proposed critical habitat.

Goal C. We strive to meet the needs of all migratory birds in our habitat strategies, especially those species which are rare, declining, or tied directly to a unit's purpose(s). We contribute to such efforts as the North American Bird Conservation Initiative, and continue to recognize the System's role in the perpetuation of the continent's waterfowl resource: more than 200 refuges and thousands of waterfowl production areas have been established for purpose of waterfowl or migratory bird conservation. We emphasize the conservation and management of those marine mammals for which the Service has been given primary management authority, including polar bears, walruses, sea otters, manatees, and dugongs, as well as the conservation of any marine mammal using System lands or waters. We emphasize the conservation and management of those fish populations using System waters and whose life-cycle movements cross international, State, or Tribal boundaries. Examples include anadromous species of salmon and free-roaming species endemic to large river systems, such as paddlefish and sturgeon.

Goal D. We sustain all native species of animals and plants that inhabit units of the System through our efforts to maintain the biological diversity, biological integrity, and environmental health of each unit. This does not preclude the consumptive use of some species when compatible with a unit's purpose(s) and the System mission, or the population management of some species to help achieve a unit's purpose(s). Some units were established primarily to protect populations of certain animal species that have a unique historic and cultural legacy in North America. We continue to emphasize the conservation of those native species tied directly to the establishment purpose(s) of units.

Goal E. Through our management and acquisition efforts, we assist states, Tribes, other agencies and conservation groups in preserving those ecosystems, plant communities, wetlands of national or international significance, and/or landscapes that are unique, rare, declining, or under-represented in existing conservation lands. We use existing and emerging classification systems that identify such ecosystems and/or resources to guide our preservation, restoration, and acquisition efforts. We care for our special designation lands such as wilderness, natural areas, wild and scenic rivers, national monuments, and national natural landmarks, and, where appropriate, expand these designations on existing and new units. We strive to establish and maintain a network of biological reserves to ensure preservation and genetic exchange of our Nation's diverse natural heritage in

partnership with other Federal land management agencies, States, conservation organizations, and members of the public participating on a voluntary basis.

Goal F. We recognize that a higher awareness of, and appreciation for, the value of fish and wildlife conservation is gained in part by providing opportunities for people to engage in compatible wildlife-dependent recreation. This higher awareness and appreciation ultimately contributes to the mission of the System. Thus, we facilitate opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation that are compatible with a unit's purpose(s) and the System mission. Our interpretive and education programs also include historic and cultural resources found on units. We actively seek partnerships for our public use programs when a lack of funds or staff limit implementation.

1.8 *How do these goals relate to management priorities?* The NWRSAA–1966, as amended, sets forth the following priority for management activities: (1) Wildlife, (2) wildlife-dependent recreational uses, and (3) other uses. Thus, goals dealing with fish, wildlife, and plants, and the habitat or ecosystems on which they depend, take priority over wildlife-dependent uses or any other uses of System lands. Wildlife-dependent recreational uses in turn take priority over those uses which are not wildlife-dependent. Each unit contributes to one or more of the goals of the System, depending on the purpose(s) of the unit, a unit's geographic and ecological setting, and the unique characteristics, potential, or limitations of each unit.

1.9 *How will we use these goals of the System?* These goals help step down the System mission and statements on System management as written in the NWRSAA–1997, as amended. Collectively, these goals articulate the foundation for our stewardship of the System and define the unique niche it occupies among the various Federal land systems. We consider these goals in developing wildlife population and habitat goals and objectives at the System, regional, ecosystem, and unit level; in providing a frame of reference for Comprehensive Conservation Plans; to guide the land acquisition decision-making process; to assist managers in applying sound professional judgment to their decisions while carrying out the purpose(s) of their units and in determining whether proposed uses are appropriate and compatible; and as a guide when developing other policies on System administration and management.

1.10 *What is meant by the term ''unit purpose?''* Unit purpose refers to the justification for the establishment of a unit of the System as a place owned by the American people and cared for on their behalf. The NWRSAA–1966, as amended, defines ''purposes of the refuge'' as the ''purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.''

1.11 *Why are unit purposes important?* Purposes define the essential objective of our refuge stewardship. They constitute a non-discretionary obligation as the legislative, legal, and administrative foundations for the administration and management of a unit of the System. This includes planning, setting unit goals and objectives, and authorization of public uses, which must be shown to be appropriate and compatible with the purpose(s) of a unit and the System mission before they are allowed.

1.12 *What are some examples of purposes?* Units acquired under the authority of general conservation laws take on the purpose of the law. Examples of such laws include the Endangered Species Act of 1973, the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, the Emergency Wetlands Resources Act, and the Alaska National Interest Lands Conservation Act. Executive Orders and refuge-specific legislation generally declare the purpose(s) of the unit, sometimes broadly (''as a preserve and breeding ground for native birds''), and sometimes very specifically (''to protect and preserve in the national interest the Key deer and other wildlife resources in the Florida Keys.'').

1.13 *Where can the purpose(s) of each unit of the System be found?* The publication ''Purposes for Refuges of the National Wildlife Refuge System'' contains the official purpose(s) for each unit. This publication is updated annually to include new additions to the System, and can be found by using the ''Search—databases'' on the System web server at http://refuges.fws.gov.

1.14 *If a unit has multiple purposes, do some purposes take priority over others?* Unless otherwise indicated in the establishing law, order, or other document, purposes dealing with the conservation, management, and restoration of fish, wildlife, and plants, and the habitats on which they depend, take precedent over other purposes in the management and administration of any unit. Where a refuge has multiple purposes related to fish, wildlife and plant conservation, the more specific purpose will take precedent in instances of conflict. Designated wilderness assumes the purposes of the Wilderness Act of 1964 in addition and equal to other unit purposes, unless otherwise specified in the wilderness designation.

1.15 *How does the purpose(s) associated with acquiring new lands for existing units relate to the original purpose(s) of the existing units?* When an addition to a unit is acquired under an authority different from the authority used to establish the original unit, the addition also takes on the purpose(s) of the original unit, but the original unit does not take on the purpose(s) of the addition.

1.16 *How does the Wilderness Act affect a unit's purpose?* The purposes of the Wilderness Act become additional and equal purposes of units with designated wilderness, but apply only to those areas so designated. The purposes of the Wilderness Act include both the preservation of wilderness condition and character, and the use and enjoyment of wilderness.

1.17 *What is the process for determining purposes of units?* The purpose(s) of existing units may be found as described in section 1.13. We will use the decision process outlined in Exhibit 1 to determine the purpose(s) of a unit. This process can be applied to all System acquisitions, including excess military lands, land exchanges, or condemnations by focusing on the acquisition authority for the particular property. This process takes into account those rare cases where acquisition authority provides a vague purpose. This process should be used for each parcel or group of parcels included under different acquisition authorities, until the purpose for each authority has been determined.

Exhibit 1—Decision Process for Determining Unit Purposes

Step I. Was the unit established by an Executive Order, public land order, or Secretarial Order?

A. Yes.

1. The document specifies the purpose(s) for the unit—DONE.

2. The document does not specify a purpose:

What is the historical record of management, management plans, and the biological history of the area? Articulate the purpose(s) for Director's approval—DONE.

3. If any lands/waters at this unit were not included under any additional authorities—DONE.

4. If any lands/waters at this unit were included under additional authorities, go to Step II.

B. No. Go to Step II.

Step II. Was the unit established or authorized by unit-specific legislation?

A. Yes.

1. The legislation states the purpose(s) of the unit—DONE.

2. The legislation does not specify a purpose:

Further research is required including legislative history, agency testimony in the Congressional Record, or documents approved by the Director, or lacking these, the biological history of the area, resource inventories, or other resource-based documentation. Articulate the purpose(s) for Director's approval—DONE.

3. If any lands/waters at this unit were not included under any additional authorities—DONE.

4. If any lands/waters at this unit were included under additional authorities, go to Step III.

B. No. Go to Step III.

Step III. Was the unit established or acquired by the authority of one or more of the following 14 laws that grant the Service acquisition authority?

1. An Act Authorizing the Transfer of Certain Real Property
2. Bankhead-Jones Farm Tenant Act
3. Consolidated Farm and Rural Development Act
4. Colorado River Storage Act
5. Emergency Wetlands Resources Act of 1986
6. Endangered Species Act of 1973
7. Fish and Wildlife Act of 1956
8. Fish and Wildlife Coordination Act
9. Lea Act
10. Migratory Bird Conservation Act
11. Migratory Bird Hunting and Conservation Stamp Act
12. North American Wetlands Conservation Act
13. National Wildlife Refuge System Administration Act of 1966
14. Refuge Recreation Act

A. Yes.

1. The purpose for acquisition is stated in the law and becomes the purpose of the unit—DONE.

2. If any lands/waters at this unit were not included under any additional authorities—DONE.

3. If any lands/waters at this unit were included under additional authorities, go to Step IV.

B. No. Go to Step IV.

Step IV. Was the unit donated to the Service?

A. Yes.

1. Research is required, including legislation that grants authority for donations, any biological reports on the unit or adjacent area, a review of fish, wildlife, and plant species of significance using the unit, and any conditions set forth in the donation letter or memorandum that do not conflict with the mission of the System. Articulate the purpose(s) for Director's approval.

Dated: December 18, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 01–20 Filed 1–12–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[1018–AG18]

Draft Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to establish, in policy, a procedure for determining when uses other than the six priority wildlife-dependent recreational uses are appropriate or not appropriate on a unit of the National Wildlife Refuge System (System). The National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), defines and establishes that wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the System and, if found compatible, will receive enhanced and priority consideration in refuge planning and management over other general public uses. This draft policy describes how we will provide priority to these uses, and establishes a process for deciding when it is appropriate to allow other, non-priority uses to occur on national wildlife refuges. We propose to incorporate this policy as Part 603 Chapter 1 of the Fish and Wildlife Service Manual.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: You may submit comments on this draft appropriate refuge uses policy by mail, fax or e:mail: by mail to J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703) 358–2248; or by e:mail to Appropriate_Uses _Policy_ Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966 providing an ''Organic Act'' for the System. The NWRSIA–1997 clearly establishes that wildlife conservation is the singular System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the System.

The NWRSIA–1997 identifies six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as the priority general public uses of the System. The NWRSIA–1997 also provides a set of affirmative stewardship responsibilities regarding our administration of the System. These stewardship responsibilities direct us to ensure that these six wildlife-dependent recreational uses are provided enhanced consideration and priority over other general public uses.

The Refuge Recreation Act of 1962 (RRA–1962) also authorizes us to regulate or curtail public recreational uses in order to insure accomplishment of our primary conservation objectives. The RRA–1962 also directs us to administer the System for public recreation when the use is an ''appropriate incidental or secondary use.''

The determination of appropriateness is the first step in deciding whether we will permit a proposed or existing use on a refuge. After we decide a use is appropriate, we then must determine that it would be compatible before allowing. The six wildlife-dependent recreational uses are the priority public uses of the System and, when compatible, have been determined to be appropriate by law. Uses which are necessary for the safe, practical, and effective conduct of a priority public use are also appropriate. We will evaluate all other uses under a screening process established by this policy to determine their relationship to the System's wildlife conservation mission, individual refuge purposes, and the six priority public uses. This screening process, the ''appropriate use'' test contained in this policy, is a decision process that refuge managers will use to quickly and systematically decide which uses are not appropriate on a national wildlife refuge. We then more thoroughly review uses, which we have

determined to be appropriate, for compatibility before we allow them on a refuge. This appropriate use policy and our compatibility policy are key tools refuge managers use together to fortify our commitment to provide enhanced opportunities for the public to enjoy wildlife-dependent recreation while at the same time ensuring that no refuge uses compromise the System's wildlife conservation mission and the individual refuge purposes. Through careful planning, System-wide application of regulations and policies, diligent monitoring of the impacts of uses on natural resources, and by preventing or eliminating uses not appropriate to the System, we can achieve our wildlife conservation mission and individual refuge purposes while also providing people with lasting opportunities for the highest quality wildlife-dependent recreation.

Appropriate Refuge Uses Policy

To ensure the primacy of the System wildlife conservation mission, the individual refuge purposes and to be sure we afford priority to the six wildlife-dependent recreational uses within the System, we are proposing to establish an appropriate refuge uses policy. This policy will apply to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses. The following is a summary of the key provisions of this policy.

The Refuge Manager will not further consider allowing a new use, nor renewing, extending, or expanding an existing use on a national wildlife refuge without determining the use to be an appropriate use. The Refuge Manager will halt, as expeditiously as practicable, existing uses determined to be not appropriate.

An appropriate use of a refuge is a proposed or existing use that meets at least one of the following three conditions:

1. The use is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge;

2. The use contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the NWRSIA–1997 was passed; or

3. The use has been determined to be appropriate in a documented analysis by the Refuge Manager, with the Refuge Supervisor's concurrence. This documented analysis will address the following 11 factors.

a. Does the use comply with applicable laws and regulations?

b. Is the use consistent with applicable Executive Orders and Department and Service policies?

c. Is the use consistent with refuge goals and objectives in an approved refuge management plan?

d. Has an earlier documented analysis not denied the use?

e. Is the use consistent with public safety?

f. Is the use manageable within available budget and staff?

g. Is the use consistent with other resource or management objectives?

h. Will the use be easy to control in the future?

i. Is the refuge the only place where this activity can reasonably occur?

j. Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources?

k. Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

If the answer is ''no'' to any of these questions, we will generally not allow the use. If the answers are consistently ''yes'' to these questions, or, if not, if there are compelling reasons why the Refuge Manager believes the use is appropriate on the refuge, the Refuge Manager then prepares a written justification, and obtains concurrence from the Refuge Supervisor. Requiring concurrence from the Refuge Supervisor will help us promote consistency within the System.

Uses determined to be appropriate are also reviewed for compatibility before they may be allowed on a refuge.

Some recreational activities, while wholesome and enjoyable, are not dependent on the presence of fish and wildlife, nor dependent on the expectation of encountering fish and wildlife. Many of these non-wildlife-dependent recreational activities are often disruptive or harmful to fish, wildlife or plants, or may interfere with the use and enjoyment of a refuge by others engaged in wildlife-dependent recreation. These uses may more appropriately be conducted on private land, or other public lands not specifically dedicated for wildlife conservation.

Purpose of This Draft Policy

The purpose of this draft policy is to modify the general guidance concerning proposed and existing uses of the System in compliance with the NWRSIA–1997. This policy establishes a procedure we will use for determining when uses are appropriate or not appropriate on a unit of the National Wildlife Refuge System, before we undertake assessing compatibility of the use.

Fish and Wildlife Service Directives System

Because many of our field stations are in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual (Service Manual), Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Service Manual contains our standing and continuing directives with which our employees comply. We use it to implement our authorities and to ''step down'' our compliance with statutes, executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

Director's Orders are limited to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. All Director's Orders must be converted as soon as practicable to appropriate parts of the Service Manual or removed. Material appropriate for immediate inclusion in the Service Manual generally is not issued as a Director's Order.

National Policy Issuances promulgate the Director's national policies for managing the Service and its programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how the Service and its employees will act in carrying out their official responsibilities.

The Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this appropriate refuge uses policy into the Service Manual as Part 603 Chapter 1.

Comment Solicitation

We seek public comments on this draft appropriate refuge uses policy and will take into consideration comments and any additional information received during the 60-day comment period. You may submit comments on this draft appropriate refuge uses policy by mail, fax or e:mail: by mail to J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703) 358–2248; or by e:mail to Appropriate_Uses_Policy_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AG18'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of this draft Service Manual appropriate refuge uses chapter to those who requested one. In addition, this draft Service Manual appropriate refuge uses chapter will be available on the Internet at http://www.fws.gov/directives/library/frindex.html during the 60-day comment period.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this policy is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

(1) This policy will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This policy is administrative, legal, technical, and procedural in nature. This policy establishes the process for determining the appropriateness of proposed national wildlife refuge uses. This policy will have the effect of providing priority consideration for wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Existing policy has been in place since 1985 that encouraged the phase-out on refuges of non-wildlife-oriented recreation. The NWRSIA–1997 does not greatly change this direction in public use, but provides legal recognition of the priority we afford to wildlife-dependent recreational uses. We expect these new procedures to cause only minor modifications to existing national wildlife refuge public use programs. While we may curtail some non-priority refuge uses, we may provide new and expanded opportunities for priority public uses. We expect an overall small increase, at most a 5 percent annual increase, in the amount of public use activities allowed on refuges as a result of this policy.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at national wildlife refuges to be $372.5 million in Fiscal Year 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges 1997). We expect the appropriate use determination process implemented in this policy to cause at most a 5 percent annual increase in recreational use System-wide. This does not mean that every refuge will have the same increase in public use. We will allow the increases only on refuges where increases in hunting, fishing, and other wildlife-dependent recreational visitation are compatible. Across the entire System, we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of $21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than $21 million because we expect the final increase in public use to be smaller than 5 percent. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the $21 million estimate.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, i.e., the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and row crops to help fulfill the System mission and refuge purposes. Congress authorizes us to allow economic activities on national wildlife refuges, and we do allow some. But, for all practical purposes (almost 100 percent), we invite the economic activities to help achieve a refuge purpose or the System mission. For example, we do not allow farming per se, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to help achieve a national wildlife refuge purpose. This policy will likely have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This policy will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the policy pertains solely to management of national wildlife refuges by the Service.

(3) This policy does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of national wildlife refuges.

(4) This policy does not raise novel legal or policy issues; however, it does provide a new approach. It adds the NWRSIA–1997 provisions that ensure that wildlife-dependent recreational

uses are the priority public uses of the System, and adds consistency in application of public use guidelines across the entire System.

Regulatory Flexibility Act

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60l *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This policy is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the determination of the appropriateness of public use activities than have existed in the past. This policy may result in more opportunities for wildlife-dependent recreation on national wildlife refuges, and may result in the reduction of some non-wildlife-dependent recreation. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Conversely, we may no longer allow some activities on some refuges. For example, some refuges may currently allow water skiing on refuge-controlled waters or the use of off-road vehicles; we would likely curtail some of these uses as we implement this policy. The overall net effect of these regulations is likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that would not otherwise have been spent there, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated $401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Expenditures as a result of this policy are a transfer and not a benefit to many small businesses. We expect the incremental increase of recreational opportunities to be marginal and scattered, so we do not expect the policy to have a significant economic effect on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

(1) Does not have an annual effect on the economy of $100 million or more. This policy will affect only visitors at national wildlife refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the System. Refer to response under Regulatory Flexibility Act.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(1) This policy will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. See response to Regulatory Flexibility Act.

(2) This policy will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. See response to Regulatory Flexibility Act.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this policy does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the System. Refer to response under Regulatory Flexibility Act.

Federalism Assessment (E.O. 13132)

In accordance with Executive Order 13132, this policy does not have significant federalism effects. This policy will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (E. O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policies, and result in better understanding of the policies by refuge visitors.

Paperwork Reduction Act

This policy does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995 is not required.

Section 7 Consultation

We are in the process of reviewing the potential of this policy to affect species subject to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). The findings of that consultation will be available as part of the administrative record for the final policy.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge Comprehensive Conservation Plans and public use management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to

public uses. In accordance with 516 DM 2, Appendix 1.10, we have determined that this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

Available Information for Specific National Wildlife Refuges

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

• Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; http://pacific.fws.gov.

• Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248–7419; http://southwest.fws.gov.

• Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300; http://midwest.fws.gov.

• Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7166; http://southeast.fws.gov.

• Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306; http://northeast.fws.gov.

• Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145; http://www.r6.fws.gov.

• Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545; http://alaska.fws.gov.

Primary Author

Tom C. Worthington, Refuge Program Specialist, Region 3, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

Draft Appropriate Refuge Uses Policy

Fish and Wildlife Service

National Wildlife Refuge System Uses

Refuge Management—Part 603 National Wildlife Refuge System Uses

Chapter 1 Appropriate Refuge Uses—603 FW 1

1.1 What is the purpose of this chapter? This chapter establishes policy that refuge managers will apply when determining the appropriateness of proposed and existing uses of national wildlife refuges before they undertake assessing compatibility in accordance with 603 FW 2. Through this policy, we establish a procedure for determining when uses other than the six wildlife-dependent recreational uses are appropriate or not appropriate on a refuge. This policy clarifies and expands upon 603 FW 2.10(D), which describes when refuge managers should deny a proposed use without determining compatibility. This policy also underscores that the fundamental mission of the National Wildlife Refuge System (System) is wildlife conservation: ''Wildlife First.''

A. National wildlife refuges are first and foremost national treasures for wildlife. Through careful planning, System-wide application of regulations and policies, diligent monitoring of the impacts of uses on wildlife resources, and by preventing or eliminating uses not appropriate to the System, we can achieve our wildlife conservation mission while also providing the public with lasting opportunities to enjoy the highest quality wildlife-dependent recreation.

B. Through consistent application of this policy, we will establish an administrative record and build public understanding and consensus regarding the types of public uses that are legitimate and appropriate within the System.

1.2 What is the scope of this policy? This policy applies to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses. In situations where reserved rights or legal mandates provide that we must allow certain uses, the requirements of this policy will not apply. For example, we will not apply this policy to proposed public uses of wetland or grassland easement areas of the System because the rights we have acquired on these areas generally do not extend to control over public uses.

1.3 What is the policy regarding the appropriateness of uses on a national wildlife refuge? At the initial stage of considering a use, Refuge Managers will not further consider allowing a new use on a national wildlife refuge, nor renewing, extending, or expanding an existing use on a national wildlife refuge, unless the Refuge Manager has determined the use to be an appropriate use. We will halt, as expeditiously as practicable, existing uses determined to be not appropriate.

1.4 What is our statutory authority for this policy? A. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law provides authority for establishing policies and regulations governing national wildlife refuge uses, including the authority to prohibit certain harmful activities. The Refuge Administration Act does not authorize any particular use but rather authorizes the Secretary to permit uses only when compatible and ''under said regulations as he may prescribe.'' This law specifically identifies certain public uses that when compatible, are legitimate and appropriate uses within the System. The law states ''* * * it is the policy of the United States that * * * compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the [National Wildlife Refuge] System * * *; * * * compatible wildlife-dependent recreational uses are the priority general public uses of the [National Wildlife Refuge] System and shall receive priority consideration in national wildlife refuge planning and management; and * * * when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a national wildlife refuge, that activity should be facilitated * * * the Secretary shall

* * * ensure that priority general public uses of the [National Wildlife Refuge] System receive enhanced consideration over other general public uses in planning and management within the [National Wildlife Refuge] System * * *'' The law also states ''In administering the [National Wildlife Refuge] System, the Secretary is authorized to take the following actions: * * * Issue regulations to carry out this Act.'' This policy fortifies the standards set in the Refuge Administration Act, by showing how we will assure that the priority public uses are provided enhanced consideration over other public uses.

B. The Refuge Recreation Act of 1962, 16 U.S.C. 460k (Refuge Recreation Act). This law authorizes the Secretary of the Interior to ''* * *administer such areas [of the National Wildlife Refuge System] or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use.''

C. Activities on lands conveyed from the System pursuant to Section 22(g) of the Alaska Native Claims Settlement Act are not subject to this policy, but are subject to compatibility (see 603 FW 2).

D. When allowing off-road vehicle use on refuges we comply with Executive Order 11644 which requires that we: designate areas as open or closed to off-road vehicles in order to protect refuge resources, promote safety, and minimize conflict among the various refuge users; monitor the effects of these uses, once they are allowed; and amend or rescind any area designation on the basis of the information gathered. Furthermore, Executive Order 11989 requires that we close areas to these types of uses when we determine that the use causes or will cause considerable adverse effects on the soil, vegetation, wildlife, habitat, or cultural or historic resources.

1.5 What do these terms mean? A. *Appropriate use.* A proposed or existing use on a refuge that meets at least one of the following three conditions.

(1) The use is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge.

(2) The use contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the National Wildlife Refuge System Improvement Act of 1997 was passed.

(3) The use has been determined to be appropriate as specified in section 1.10 of this chapter.

B. *Native American.* American Indians in the conterminous United States, and Alaska Natives (including Aleuts, Eskimos, and Indians) who are members of federally recognized tribes.

C. *Priority public use.* A wildlife-dependent recreational use involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

1.6 What are our responsibilities? A. *Director.* Provides national policy for determining the appropriateness of uses within the System to ensure that such determinations comply with all applicable authorities.

B. *Regional Director.* (1) Ensures that refuge managers follow laws, regulations, and policies when determining appropriateness.

(2) Notifies the Director regarding controversial or complex appropriateness determinations.

C. *Regional Chief.* (1) Makes the final decision on appropriateness determinations when the Refuge Supervisor does not concur with the Refuge Manager.

(2) Notifies the Regional Director regarding controversial or complex appropriateness determinations.

D. *Refuge Supervisor.* (1) Reviews the Refuge Manager's determination that an existing or proposed use is appropriate when that use is not a priority public use, or does not support a priority public use, or is not already described in a refuge management plan approved after October 9, 1997.

(2) Refers an appropriateness determination to the Regional Chief if the Refuge Supervisor does not concur with the Refuge Manager. Discusses non-concurrence with the Refuge Manager for possible resolution before referring to the Regional Chief.

(3) Notifies the Regional Chief regarding controversial or complex appropriateness determinations.

E. *Refuge Manager.* (1) Determines if a proposed or existing use is subject to this policy.

(2) Determines whether a use is appropriate or not appropriate.

(3) Documents all determinations under this policy as described in section 1.10 of this chapter in writing.

(4) Refers all findings of appropriateness for any proposed use which is not a priority public use, or which does not directly support a priority public use, or which is not already described in a refuge management plan approved after October 9, 1997 to the Refuge Supervisor for concurrence.

1.7 What is the relationship between appropriateness and compatibility? This policy describes the initial decision process the Refuge Manager follows when first considering whether to allow or not allow a proposed use on a refuge. This appropriateness decision occurs before the Refuge Manager undertakes a compatibility review of the use. This policy clarifies and expands upon 603 FW 2.10(D), which describes when refuge managers should deny a proposed use without determining compatibility. If we find a proposed use to be not appropriate, we will not allow the use, and there is no need to prepare a compatibility determination. By screening out proposed uses which are not appropriate to the System, the Refuge Manager avoids an unnecessary compatibility review. By following the process for determining the appropriateness of a use, we strengthen the System and help fulfill our wildlife conservation mission. We describe this appropriateness determination process in section 1.10 of this chapter. It is important to remember that although a refuge use may be determined to be both appropriate and compatible, the Refuge Manager retains the authority not to allow the use. For example, there may be occasions when two appropriate and compatible uses are in conflict with each other. In these situations, even though both uses are appropriate and compatible, the Refuge Manager may need to limit or entirely curtail one of the uses in order to optimize the greatest benefit to the public and to refuge resources. See 603 FW 2 for detailed policy on compatibility.

1.8 How are uses considered in the comprehensive conservation planning process? A. We will manage all refuges in accordance with an approved Comprehensive Conservation Plan (CCP). The CCP describes the desired future conditions of the refuge or refuge planning unit and provides long-range guidance and management direction to accomplish the purposes of the refuge and the System mission. The CCP is prepared with public involvement, and will include a review of the appropriateness and the compatibility of existing refuge uses and of any planned future uses. If during the CCP preparation we identify prior approved uses which we can no longer consider appropriate on the refuge, we will clearly explain to the public our reasons and describe how we will eliminate the use.

B. We prepare CCPs with full public involvement, and provide the public an opportunity to review and comment on our decisions about which uses we will allow. For proposed new uses which we did not consider during the CCP preparation process, we will apply the guidelines contained in this policy and make an appropriateness determination without additional public review and comment. However, if we determine

that a proposed use is appropriate, the use must still pass the compatibility standard, which includes an opportunity for public review and comment. See 602 FW 1–4 for detailed policy on refuge planning.

1.9 What are the different types of refuge uses? For the purposes of this policy, there are five types of uses.

A. *Priority public uses.* These are uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. They are legitimate, appropriate, and are the first priority uses of the System. See 605 FW 1–7 for detailed policy on the priority public uses.

B. *Public uses that directly support a priority public use.* These are uses necessary for the safe, practical, and effective conduct of priority public uses. When determined to be compatible, these are the second priority uses of the System. Uses that directly relate to and facilitate one of the six priority public uses are generally appropriate. Typically, these activities occur at the same time and place as the priority public use and are used either as a practical mode of access, or as an effective way to support a priority public use. In these cases, the primary reason for this use is to enable a person to enjoy one of the priority public uses. For example, boating on a refuge lake may be necessary to enjoy fishing or birdwatching; in this case the boating is an appropriate support activity. Conversely, speed boating for the pleasure of traveling on the open water is not an activity that supports one of the priority public uses. As another example, horseback riding and camping on the Charles M. Russell National Wildlife Refuge in Montana may be appropriate in support of big game hunting. In this case, horseback riding is a practical mode of access to remote, roadless areas, and camping is a necessary part of hunting in the remote parts of this vast refuge. On this refuge, or on other large or remote refuges, both horseback riding and camping may directly and appropriately support other priority public uses. As a contrasting example, camping on Necedah National Wildlife Refuge in Wisconsin, even if part of a hunting program, is not appropriate because the size of the refuge is such that camping is not necessary for reasonable access to its hunt areas, and there are camping and lodging accommodations nearby off the refuge. In order to ensure accessibility to refuge programs and activities for people with disabilities, we may authorize specialized means of access that are not normally allowed. We will provide these accommodations on a case-by-case basis, depending on the nature of the individual's disability, and our needs to protect refuge resources. See 605 FW 1–7 for detailed policy on the priority public uses.

C. *Public uses not related to a priority public use.* These public uses are not necessary to support a priority public use. Public uses not directly related to the priority public uses or that do not contribute to the fulfillment of refuge purposes, goals or objectives as described in current refuge management plans are the lowest priority for refuge managers to consider. Because these uses are likely to divert refuge management resources from higher priority public uses, or away from our wildlife conservation activities, there is general presumption, in both law and policy, against allowing such uses within the System. Before we will allow these uses, regardless of their frequency or duration, we must first determine that these public uses are appropriate as defined in section 1.10 of this chapter.

D. *Specialized uses.* These are uses not usually allowed that require specific authorization from the Service, often in the form of a special use permit, letter of authorization, or other permit document. These uses do not include uses already granted by a prior existing right. We determine the appropriateness of specialized uses on a case-by-case basis. Before we will allow a specialized use, we must determine it to be appropriate as defined in section 1.10 of this chapter. Any person denied a request for a specialized use, or adversely affected by the Refuge Manager's decision relating to a person's permit, may appeal the decision by following the procedures outlined in 50 CFR 25.45, and in 50 CFR 36.41(i). The appeals process for the denial of a right-of-way application is found in 50 CFR 29.22. The appeals process for persons who believe they have been improperly denied rights with respect to providing visitor services on Alaska refuges is found in 50 CFR 36.37(g). Some common examples of specialized uses include the following.

(1) *Right-of-ways.* See 340 FW 3 and 603 FW 2 for detailed policy on right-of-ways.

(2) *Telecommunications facilities.* We process a request to construct a telecommunication facility on a refuge the same way as any other right-of-way request. The Telecommunications Act of 1996 does not supersede any existing laws, regulations, or policy relating to right-of-ways on refuges. The Refuge Manager should continue to follow the procedures found in 340 FW 3.

(3) *Military, NASA, border security, and other national defense uses.* The following guidelines apply to refuge lands owned in fee title by the Service or lands to which the Service has management rights that provide for the control of such uses.

(a) We will continue to honor existing, long-term written agreements such as Memorandum of Understanding (MOU) between the Service, the military, NASA, and other Federal agencies with national defense missions. Only the Director may approve any modification to existing agreements. We do not anticipate entering into any new agreements permitting military preparedness activities on national wildlife refuges. Where joint military/NASA—Service jurisdiction occurs by law, an MOU negotiated by the principal parties, and subject to the approval of the Director, will specify the roles and responsibilities, terms, and stipulations of the refuge uses. Wherever possible, we will work to find practical alternatives to the use of refuge lands, and to minimize the impacts to wildlife resources.

(b) For routine or continuous law enforcement and border security activities, an MOU between the Service and the specific enforcement agency will clearly define roles and responsibilities of the enforcing agency and will specify steps they must take to minimize impacts to refuge resources. For emergency or undercover operations, reasonable notification must be given to and approval must be received from the Refuge Manager.

(c) We consider military activities on refuge lands that directly benefit refuge purposes to be refuge management activities, and they are not subject to this policy. For example, in a case where a national guard unit is assisting the refuge with the construction of a water control structure, or helping to repair a refuge bridge, we consider these uses to be refuge management activities and do not consider them to be specialized uses.

(4) *Research.* As a leader in wildlife management, we actively encourage cooperative wildlife resource-related research activities that address our management needs. We also encourage research related to the management of priority public uses. Wildlife resource-related research activities are generally appropriate. Research that directly benefits refuge management has priority over other research. These uses must be determined to be appropriate as defined in section 1.10 of this chapter.

(5) *Public safety training.* We may assist local government agencies with

health, safety, and rescue training operations on the refuge if we determine the use to be appropriate. Examples include fire safety training, search and rescue training, and boat operations safety training. General law enforcement training exercises usually are not appropriate. We will evaluate these requests on a case-by-case basis, considering the availability of other local sites and the nature of other local resources. To the extent practicable, we will develop written agreements with the requesting agencies. These uses must be determined to be appropriate as defined in section 1.10 of this chapter, although it is unlikely that this type of use will pass the 10 criteria listed there.

(6) *Native American ceremonial, religious, and traditional gathering of plants.* We will review specific requests and provide reasonable access to Native Americans to refuge lands and waters for gathering plants for ceremonial, religious, medicinal, and traditional purposes. We may issue use permits if the use is consistent with treaties, judicial mandates, or Federal and Tribal law. These uses must be determined to be appropriate as defined in section 1.10 of this chapter.

(7) *Natural resource extractions.* Although most refuges are withdrawn from the mining and mineral leasing laws (i.e., closed to mining activities), several are at least partially open. It is incumbent upon refuge managers to know if these laws affect their particular refuge. Where a refuge is closed, we will prohibit prospecting, exploration, development, extraction, or removal of leaseable (*e.g.*, oil, gas, coal) and locatable (hardrock) minerals (see 50 CFR 27.61 and .64). We only allow the extraction of certain mineral resources (such as gravel) that supports a refuge management activity when there is no practical alternative. We will not justify such activity by citing budgetary constraints, rather we will seek appropriate funding through our normal budgetary process for projects that require gravel or other such resources found on the refuge. In some instances, individual refuges may be subject to valid existing mineral rights reserved during the acquisition process or rights vested prior to our acquisition of the lands. The owners of valid mining rights have the right to extract the minerals, even if they do not own the surface, and we may not unduly interfere with this right. Activities or uses relative to prior existing rights are generally outside the scope of this chapter. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other access agreement to alleviate or minimize adverse impacts to the refuge (see 50 CFR 29.32). ANILCA provides specific guidance for oil and gas leasing on Alaska refuges.

(8) *Commercial uses.* Commercial uses on a refuge may be appropriate if they directly support a priority public use or are a refuge management economic activity. See 50 CFR 29.1 for additional information on economic uses of refuges. An example of an appropriate commercial use would be a concession-operated boat tour that facilitates wildlife observation and interpretation. All commercial uses are subject to appropriateness determinations. These uses must be determined to be appropriate as defined in section 1.10 of this chapter. The following is a list of references for more detailed policy on commercial uses.

(a) Administration of commercial and economic uses 604 FW 2.

(b) Administration of commercial guiding of wildlife observation, hunting and fishing 604 FW 2.

(c) Concession management 604 FW 2.

(d) Commercial audio-visual management 604 FW 7, and 43 CFR 5.

(e) Commercial visitor services on Alaska Refuges 43 CFR 36.37.

E. *Prohibited uses.* Regulations prohibiting certain activities on national wildlife refuges are listed in 50 CFR part 27.

1.10 *How do we determine the appropriateness of a use on a national wildlife refuge?* A. A refuge use is appropriate if the use meets at least one of the following three conditions.

(1) A use is appropriate if it is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge. This finding does not require Refuge Supervisor concurrence.

(2) A use is appropriate if it contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the National Wildlife Refuge System Improvement Act of 1997 was passed. This finding does not require Refuge Supervisor concurrence.

(3) A use is appropriate if the Refuge Manager documents in writing reasons why the use should be considered appropriate and obtains concurrence from the Refuge Supervisor (see Exhibit 1). The Refuge Manager will base this finding of appropriateness in consideration of the following 11 factors. If the answer is ''no'' to any of the following questions, we will generally not permit the use. If the answers are consistently ''yes'' to these questions, and if there are compelling reasons why the Refuge Manager believes the use is appropriate for the refuge, the Refuge Manager then prepares a written justification (Exhibit 1), and obtains the Refuge Supervisor's written concurrence before proceeding with preparation of a compatibility determination. Concurrence from the Refuge Supervisor will promote System consistency and will help us avoid establishing precedents that may be difficult to overcome in the future. Furthermore, refuge supervisors will usually consult with their Regional Chief as these decisions are made. This section specifically clarifies and expands upon 603 FW 2.10(D) Denying a proposed use without determining compatibility.

(a) Does the use comply with applicable laws and regulations? The proposed use must be consistent with all applicable laws and regulations (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, 50 CFR part 27). Uses that are prohibited by law are immediately rejected.

(b) Is the use consistent with applicable Executive Orders and Department and Service policies? If the proposed use conflicts with an applicable executive order, or Department or Service Policy then the use should be rejected.

(c) Is the use consistent with refuge goals and objectives in an approved refuge management plan? Refuge goals and objectives are documented in approved refuge management plans (e.g., Comprehensive Conservation Plans, comprehensive management plans, master plans, step-down management plans). If the proposed use, either directly or in combination with other uses or activities, conflicts with a refuge goal, objective or management strategy, the use should not be considered further. If a plan which addresses this use has not been developed or yet approved, refer to 1.10.A(1)(g) of this chapter.

(d) Has an earlier documented analysis not denied the use? If we have already considered the proposed use in a refuge planning process and rejected it as not appropriate, then the use should not be considered further. If circumstances have changed significantly, then we may consider the use further. If we did not raise the proposed use as an issue during a refuge planning process, we may further consider the use.

(e) Is the use consistent with public safety? If the proposed use creates an unreasonable level of risk to visitors or refuge staff, or if the use requires refuge

staff to take unusual safety precautions to assure the safety of the public or other refuge staff, then the use should be rejected.

(f) Is the use manageable within available budget and staff? Priority public uses take precedence over other public uses. If a proposed use diverts management efforts or resources away from the proper and reasonable management of a priority use, or from a refuge management activity, the proposed use should be rejected.

(g) Is the use consistent with other resource or management objectives? If the Refuge Manager cannot articulate why a proposed use would be consistent with a stated wildlife conservation or other resource or public use management objective of the refuge, then the use should be rejected.

(h) Will the use be easy to control in the future? If the use would lead to recurring requests for the same or similar activities that will be difficult to control in the future, then the request should be rejected. If we can manage the use so that impacts to wildlife resources are minimal or inconsequential, or if we can establish clearly defined limits, then we may further consider the use.

(i) Is the refuge the only place this activity can reasonably occur? If there are other nearby public or private lands that can reasonably accommodate the use, then the use should be rejected. If the proposed use involves or commemorates a culturally or historically significant event or activity that has direct connection to the refuge, then we may further consider the use.

(j) Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources? We generally will not allow other uses that are not beneficial to or which do not lead to greater public understanding or appreciation of the refuge's cultural or wildlife resources.

(k) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

B. If the Refuge Manager finds that a proposed use is not appropriate, the finding must be documented for the refuge files (Exhibit 1). This finding does not require Refuge Supervisor concurrence.

C. Following the issuance of this policy, refuge managers must review all existing uses for appropriateness within 1 year. If the Refuge Manager finds that an existing use is not appropriate, the use must be modified so it is appropriate, or it must be terminated or phased out as expeditiously as practicable. This finding must be documented for the refuge files (Exhibit 1). A finding of ''not appropriate'' does not require Refuge Supervisor concurrence. However, the decision to modify or terminate a use may be subject to the National Environmental Policy Act (NEPA). Refuge managers should consult with their Regional NEPA Coordinator to see if this decision would be subject to NEPA.

D. The System Headquarters will maintain a database of refuge uses. This database will include a refuge-by-refuge listing of all uses that have been approved and not approved by refuge managers. With this information, refuge managers will know when proposed uses have already been approved or denied at any other unit of the System. This information will help strengthen the System by reinforcing consistency and integrity in the way we consider refuge uses.

Determination of Appropriateness of a Proposed Refuge Use

Refuge Name: _____

Proposed Use: _____

This form is not required for priority public uses, uses that support a priority public use, or uses already described in a current CCP.

	Yes	No
The proposed refuge use:		
Does the use comply with applicable laws and regulations?	.....	.....
Is the use consistent with applicable Executive Orders and Department and Service policies?	.....	.....
Is the use consistent with refuge goals and objectives in an approved refuge management plan?	.....	.....
Has an earlier documented analysis not denied the use?	.....	.....
Is the use consistent with public safety?	.....	.....
Is the use manageable within available budget and staff?	.....	.....
Is the use consistent with other resource or management objectives?	.....	.....
Will this use be easy to control in the future?	.....	.....
Is the refuge the only place this activity can reasonably occur?	.....	.....
Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources?	.....	.....
Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?		

If the answer to any of these questions is no, the proposed use is probably not appropriate and we should generally not consider it further. However, if there are compelling reasons why the Refuge Manager believes the use should be considered, the Refuge Manager must justify the use in writing on an attached sheet, and obtain the Refuge Supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate _____

Appropriate _____

Refuge Supervisor: _____

Date: _____

If determined to be Not Appropriate, the Refuge Supervisor does not need to sign concurrence:

If determined to be Appropriate, the Refuge Supervisor must sign concurrence:

Refuge Supervisor: _____

Date: _____

Compatibility determination is required before the use may be allowed.

Dated: December 18, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 01–19 Filed 1–12–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service 1018–AG20

[1018–AG20]

Draft Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to adopt a policy that will explain how we will provide

visitors with high quality hunting, fishing, wildlife observation and photography, and environmental education and interpretation opportunities on units of the National Wildlife Refuge System (System). The National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), defines and establishes that wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the System and, if found compatible, will receive enhanced and priority consideration in refuge planning and management over other general public uses. This draft policy describes how we will provide priority to these uses. We propose to incorporate this policy as Part 605 Chapters 1–7 of the Fish and Wildlife Service Manual.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: You may submit comments on this draft wildlife-dependent recreational uses policy by mail, fax or e:mail: by mail to Douglas Staller, Acting Chief, Division of Visitor Services and Communications, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703) 358–2248; or by e:mail to Wildlife__Dependent__Recreational__Uses__Policy__Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Douglas Staller, Acting Chief, Division of Visitor Services and Communications, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966 providing an ''Organic Act'' for the System. The NWRSIA–1997 clearly establishes that wildlife conservation is the singular System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the System.

The NWRSIA–1997 identifies six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as the priority general public uses of the System. The NWRSIA–1997 also provides a set of affirmative stewardship responsibilities regarding our administration of the System. These stewardship responsibilities direct us to ensure that these six wildlife-dependent recreational uses are provided enhanced consideration and priority over other general public uses.

The Refuge Recreation Act of 1962 (RRA–1962) authorizes us to administer the System for public recreation when the use is an ''appropriate incidental or secondary use.'' The RRA–1962 also requires us to regulate or curtail public recreational uses in order to insure accomplishment of our primary conservation objectives.

The six wildlife-dependent recreational uses are the priority public uses of the System have been determined to be appropriate by law and, when compatible, are to be facilitated. This Draft Wildlife-Dependent Recreational Uses Policy, the Draft Appropriate Refuge Uses Policy published concurrently in the notice section of this **Federal Register** and our Final Compatibility Policy and Regulations published in the October 18, 2000 **Federal Register** are key tools refuge managers use together to fortify our commitment to provide enhanced opportunities for the public to enjoy wildlife-dependent recreation while at the same time ensuring that no refuge uses compromise the System's wildlife conservation mission and the individual refuge purpose(s). Through careful planning, consistent System-wide application of regulations and policies, diligent monitoring of the impacts of uses on natural resources, and by preventing or eliminating uses not appropriate to the System, we can achieve our wildlife conservation mission and individual refuge purposes while also providing people with lasting opportunities for the highest quality wildlife-dependent recreation.

Wildlife-Dependent Recreational Uses Policy

To ensure the primacy of the System wildlife conservation mission as well as the individual refuge purpose(s), and to be sure we afford priority to the six wildlife-dependent recreational uses within the System, we are proposing to establish a policy on wildlife-dependent recreational uses. Following is a summary of this policy.

Chapter 1 General Guidance provides Service policies, strategies, and requirements concerning the management of recreation programs within the System. National wildlife refuges are national treasures for wildlife and for people who enjoy the wonders of the outdoors. Wildlife-dependent recreation programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. To assure that the System's fish, wildlife, and plant resources endure, their needs must come first. Thus, we only allow recreational uses on a refuge after we determine that use to be appropriate and compatible. In addition, we manage recreation in accordance with applicable Federal, State, and Tribal laws [see Code of Federal Regulations (CFR), Title 50 subchapter C]. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges. The policy outlined in this chapter applies to all recreational use activities that occur within the System, including wildlife-dependent and other appropriate recreational uses. Our general policy is to provide the American public high-quality opportunities to take part in wildlife-dependent recreation, regardless of age, race, religion, color, sex, national origin, sexual orientation, or physical or mental ability. To accomplish this policy, we ensure consistency and professionalism in planning and implementing recreational use programs and activities on System lands. Wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the System and, when determined to be compatible, will receive enhanced and priority consideration in refuge planning and management over all other general public uses.

Chapter 2 Hunting provides Service policy governing the management of recreational hunting within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies hunting as a priority public use of the System. Hunting programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. Hunting is also an integral part of a comprehensive wildlife management program. When determined to be compatible, refuge managers are strongly encouraged to provide to the public high-quality hunting opportunities. We plan hunting programs in consultation and cooperatively with appropriate State and Tribal agencies, and we conduct them, to the extent practicable, in accordance with applicable State and

Tribal regulations. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Chapter 3 Fishing provides Service policy governing the management of recreational fishing within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies fishing as a priority public use of the System. Fishing programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. When determined to be compatible, refuge managers are encouraged to provide to the public high-quality fishing opportunities. We plan fishing programs in consultation and cooperatively with the appropriate State and Tribal agencies. We base fishing seasons on refuges on local conditions and biological objectives. These seasons must, where practicable, conform with appropriate Federal, State, and Tribal regulations. The Service's Division of Fish and Wildlife Management Assistance has many field offices with a broad range of expertise that are available to the Refuge Manager when planning and managing fishing programs. We encourage refuge managers to take advantage of this important resource. We also encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Chapter 4 Wildlife Observation provides Service policy governing the management of recreational wildlife observation within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies wildlife observation as a priority public use of the System. Wildlife observation programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. When determined to be compatible, refuge managers are encouraged to provide to the public high quality wildlife observation opportunities. Refuge managers are encouraged to coordinate refuge wildlife observation programs with applicable Federal, State and Tribal programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Chapter 5 Wildlife Photography provides Service policy governing the management of recreational wildlife photography within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies wildlife photography as a priority public use of the System. Wildlife photography programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. When determined to be compatible, refuge managers are encouraged to provide to the public high quality wildlife photography opportunities. Refuge managers are encouraged to coordinate wildlife photography programs with applicable State programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Chapter 6 Environmental Education provides Service policy governing the management of environmental education within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies environmental education as a priority public use of the System. Environmental education programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. When determined to be compatible, refuge managers are encouraged to provide to the public high quality environmental education opportunities. Refuge managers will work with local schools, citizen groups, and other organizations to provide these programs. We encourage refuge managers to coordinate refuge environmental education programs with applicable local, State and Federal programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Chapter 7 Interpretation provides Service policy governing the management of interpretation within the System. The NWRSAA–1966 as amended by the NWRSIA–1997 identifies interpretation as a priority public use of the System. Interpretation programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. When determined to be compatible, refuge managers are encouraged to provide to the public high quality interpretation opportunities. We encourage refuge staff to coordinate refuge interpretive programs and materials with applicable local, State, and Federal programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

Fish and Wildlife Service Directives System

Because many of our field stations are in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual (Service Manual), Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Service Manual contains our standing and continuing directives with which our employees comply. We use it to implement our authorities and to ''step down'' our compliance with statutes, executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

Director's Orders are limited to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. All Director's Orders must be converted as soon as practicable to appropriate parts of the Service Manual or removed. Material appropriate for immediate inclusion in the Service Manual generally is not issued as a Director's Order.

National Policy Issuances promulgate the Director's national policies for managing the Service and its programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how the Service and its employees will act in carrying out their official responsibilities.

The Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this

wildlife-dependent recreational uses policy into the Service Manual as Part 605 Chapters 1–7.

Comment Solicitation

We seek public comments on this draft wildlife-dependent recreational uses policy and will take into consideration comments and any additional information received during the 60-day comment period. You may submit comments on this draft appropriate refuge uses policy by mail, fax or e:mail: by mail to Douglas Staller, Acting Chief, Division of Visitor Services and Communications, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703)358–2248; or by e:mail to Wildlife__Dependent__Recreational__Uses__Policy__Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AG18'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703)358–1744. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of these draft Service Manual wildlife-dependent recreational uses chapters to those who requested one. In addition, these draft Service Manual wildlife-dependent recreational uses chapters will be available on the Internet at http://www.fws.gov/directives/library/frindex.html during the 60-day comment period.

Required Determinations

We have analyzed the impacts of this final policy in concert with the draft appropriate refuge uses policy published concurrently in the today's issue of the **Federal Register**. For compliance with applicable laws and executive orders affecting the issuance of polices, see the **SUPPLEMENTARY INFORMATION** section of the draft appropriate refuge uses policy notice.

Available Information for Specific National Wildlife Refuges

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; http://pacific.fws.gov.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248–7419; http://southwest.fws.gov.
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300; http://midwest.fws.gov.
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7166; http://southeast.fws.gov.
- Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306; http://northeast.fws.gov.
- Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145; http://www.r6.fws.gov.
- Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545; http://alaska.fws.gov.

Primary Author

Deb Steen, Outdoor Recreation Planner and Dennis Prichard, Outdoor Recreation Planner, National Wildlife Refuge System, U.S. Fish and Wildlife Service, are the primary authors of this notice.

Draft General Guidance Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 1 General Guidance 605 FW 1.1

1.1 *What is the purpose of this chapter?* This chapter provides Fish and Wildlife Service (Service) policies, strategies, and requirements concerning the management of recreation programs within the National Wildlife Refuge System (System).

1.2 *What is the System's general recreation management policy?* National wildlife refuges are national treasures for wildlife and for people who enjoy the wonders of the outdoors. To assure that the System's fish, wildlife, and plant resources endure, their needs must come first. Thus, we only allow recreational uses on a refuge after we determine that use to be appropriate and compatible. In addition, we manage recreation in strict accordance with applicable Federal, State, and Tribal laws [see Code of Federal Regulations (CFR), Title 50 subchapter C]. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges. The policy outlined in this chapter applies to all recreational use activities that occur within the System, including wildlife-dependent and other appropriate

recreational uses. Our general policy is to provide the American public high-quality opportunities to take part in wildlife-dependent recreation, regardless of age, race, religion, color, sex, national origin, sexual orientation, physical or mental ability. To accomplish this policy, we ensure consistency and professionalism in planning and implementing recreational use programs and activities on System lands.

1.3 *What authorities allow recreation use to occur on the Refuge System?* The following are laws and executive orders that regulate recreational use on System lands:

A. Laws

(1) Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410 hh-3233 and 43 U.S.C. 1602–1784)
(2) Alaska Native Claims Settlement Act (43 U.S.C. 1601–1624)
(3) Antiquities Act of 1906 (16 U.S.C. 431-433)
(4) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470mm)
(5) Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j) as amended.
(6) Fish and Wildlife Conservation Act (16 U.S.C. 2901–2911), as amended
(7) Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 7421)
(8) Land and Water Conservation Fund [16 U.S.C. 460(l-4)-(l-11)],as amended.
(9) National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended
(10) Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) as amended
(11) Wild and Scenic Rivers Act (16 U.S.C. 1271–1287), as amended.
(12) Wilderness Act of 1964 (16 U.S.C. 1131–1136)
(13) Endangered Species Act of 1973 (16 U.S.C. 1531–1544)

B. Executive Orders

(1) 11593—Protection and Enhancement of the Cultural Environment
(2) 11644—Use of Off-road Vehicles on the Public Lands
(3) 12996—Management and General Public Use of the National Wildlife Refuge System
(4) 13007—Indian Sacred Sites
(5) 12962—Recreational Fisheries

1.4 *How do we define the following terms?* The following are definitions of terms used throughout this chapter.

A. Priority wildlife-dependent recreational use and priority wildlife-dependent recreation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that there are six priority general public uses of the National Wildlife Refuge System. The uses are hunting (605 FW 2), fishing (605 FW 3), wildlife observation (605 FW 4), wildlife photography (605 FW 5), environmental education (605 FW 6) or environmental interpretation (605 FW 7).

B. Other recreational use. A recreational use of the System that is not one of the priority wildlife-dependent uses, but we may allow it if it is appropriate and compatible.

C. Public use. Any use of the System by the public, including, but not limited to, those recreational uses and priority wildlife-dependent uses described above.

1.5 *What tools can we use to help us implement and manage a recreational use program?* Refuge managers have various tools available to them to implement recreational use programs on refuges. These include, but are not limited to: building successful refuge support groups, building successful volunteer programs, implementing a user fee program, conducting meetings, highlighting refuge attributes through exhibits and brochures, hiring staff, training personnel, registering users, and issuing special use permits. We determine overall effectiveness of the programs by evaluating factors such as improved resource protection, the success of refuge support groups, the quality of the visitor's experience, and visitor compliance.

1.6 *How do we promote the mission of the System?* We can promote the mission of the System through special events on both a local and national scale to showcase the System's roles in conservation efforts. These events can enhance public understanding and appreciation for conservation, and encourage broader public enjoyment of natural resources. We encourage Refuge managers to host special events for National Wildlife Refuge Week, International Migratory Bird Day, National Hunting and Fishing Day, Youth Hunting Days, National Fishing Week, and celebrations on refuge anniversaries, where appropriate. We also encourage Refuge managers to look for ways to introduce new sectors of the public to the System during these celebrations. By reaching out to new sectors, we lay the foundation to expand support for the System, understanding of wildlife conservation and management, and participation in wildlife dependent recreation.

1.7 *What management techniques are available to help us administer recreation programs?* We will successfully administer recreational programs through the use of:

A. *Monitoring.* Refuge managers, with help and support from Regional Offices as well as the public, must adequately monitor recreational activities on System lands. Monitoring programs must focus on the impacts of recreational activities on wildlife, habitat, and the quality of experience for the public. By implementing successful monitoring techniques, we can evaluate and adaptively manage to meet established standards and ensure that activities continue to be appropriate and compatible.

B. *Resolving conflicts.* Refuge managers may establish use limits and/or zones for specific activities, disperse or restrict use, or use other means to minimize or eliminate conflict between uses that occur at refuges. We will ensure that non-priority uses, if allowed, do not interfere with or diminish the opportunity for or quality of priority wildlife-dependent recreational uses. Through the use of zones or the establishment of acceptable limits, we can generally provide a balanced recreation program and avoid favoring one priority recreational opportunity over another when both are compatible. We recognize, however that some refuges can support no public use; many refuges only support limited public use; and that not every priority use can be accommodated on every refuge.

C. *Closure of sensitive areas.* Once opened to public use, the Refuge Manager may make a determination to close all or part of a refuge for public health and human safety reasons or to protect fish, wildlife, or plant resources. During non-emergency closure situations, the public will be notified and have the opportunity to participate in the decision-making process. During emergency closures, we will make every effort to keep the public informed of management decisions and, where possible, the basis for the closure.

1.8 *How do we address special requests and temporary situations?* The System's recreational use policy must be flexible enough to address special requests or temporary situations. We accommodate these requests only if they are appropriate, compatible, and there are clear benefits to the Service for allowing the use. Provided the use is determined to be both appropriate (reference Appropriate Uses Chapter, 603 FW 1) and compatible, the Refuge Manager, with guidance from the Regional Office, may issue a one-time or short-term permit for recreational activities not generally allowed (*e.g.,* an overnight activity or use of an historic structure). We must keep written justification documenting the analysis on file for an adequate period of time.

1.9 *What are the general recreation guidelines for the System?* Hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation are priority wildlife-dependent recreational uses of the System. Refuge managers must facilitate wildlife/outdoor experiences that provide visitors with high quality experiences and help them understand and appreciate the value of the individual refuge and its role in the System. Refuge managers must analyze the effects of the priority wildlife-dependent recreational uses and must, unless there is a valid reason not to, provide for those priority uses determined to be compatible. Not all refuges will be able to support each, or even any, of the six priority wildlife-dependent recreational uses. If it is determined that a refuge can support one or more of these uses, the priority wildlife-dependent recreational use must receive preferential consideration in refuge planning and management before the Refuge Manager analyzes other appropriate recreational opportunities. These uses provide opportunities for visitors to become interested in and enjoy quality wildlife/outdoor experiences and learn about, understand, and support resource management programs. Refuge managers should produce programs that not only inform visitors about the System but emphasize the specific role of the individual refuge. Refuge managers should explore partnerships with Federal, State, Tribal, and local agencies to enhance wildlife-dependent recreation programs. Refuge managers should look for ways to encourage priority wildlife-dependent recreation uses, however, if little or no demand exists for a priority use, we do not require Refuge managers to provide that use. The following general guidelines apply to recreation management throughout the System:

A. *Recreational uses that enable priority wildlife-dependent recreational uses.* Refuge managers may allow (with written justification) other compatible recreational uses that are necessary to facilitate the priority wildlife-dependent recreational uses. We can allow non-wildlife-dependent activities when needed to provide access to, help implement, or sustain a priority use when no other way is practicable. Refuge managers must determine the appropriateness as well as compatibility of such uses before allowing them to occur on System lands. For example, camping may be necessary to facilitate hunting on large remote refuges but may not be necessary to facilitate hunting on refuges near developed areas where camping or other lodging is available.

B. After hours recreational use. We may, on occasion, allow activities to occur on a refuge at night if it is appropriate and compatible with the purpose(s) of the refuge and the System mission. An example might be night fishing. Allowing night activities on the refuge often requires increased management and law enforcement capability, and the manager must consider these factors in assessing the effect of the action on wildlife goals and objectives. A use should not be allowed simply because it is a historical use.

C. Non-priority recreational uses. When considering non-priority public uses, Refuge managers must refer to the Appropriate Uses Chapter (603 FW 1).

D. Access to sacred sites. Refuge managers will accommodate access to and ceremonial use of sacred sites by religious practitioners of recognized Native American Tribes and Native Hawaiians in accordance to Executive Order 13007 or 614 FW 1–5. Refuge managers, with help from their regional cultural resource staff, must familiarize themselves with Executive Order 13007, which clarifies and highlights procedures to execute this policy. Refuge managers should understand that these sites are sensitive, and allowing uncontrolled access by the general public to them is unacceptable. Refuge managers must ensure the physical integrity of the sites, including maintaining appropriate location confidentiality. Refuge managers will utilize formal agreements to outline the responsibilities of all parties involved in implementing the Executive Order.

1.10 *Are there general criteria that we can use to decide which recreational activities to allow?* The following general criteria will help Refuge managers decide what recreational activities to allow, encourage, or develop, and at what level. Refuge managers must eliminate, with adequate consultation, documentation and cooperation with affected Federal, State, Tribal, local authorities, and groups, programs that do not meet these criteria.

A. Ensure appropriateness. Refuge managers, in consultation with Regional Offices when deemed necessary, must first consider if a use is appropriate on System lands. Refuge managers must be able to show why the requested use supports the System mission and the purpose of the refuge before investing additional resources for a compatibility determination.

B. Ensure compatibility. Refuge managers must:

(1) Exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws.

(2) Consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation).

(3) Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) authorize any use not determined to be compatible.

C. Focus on wildlife. Wildlife conservation is the first priority of the System, and new and ongoing recreational use programs should help visitors focus on wildlife and other natural resources. Activities should make visitors aware of the most important resource issues at the refuge, be supportive of management plans that address those issues, and show how the refuge contributes to the mission of the System.

D. Tailor programs to refuge needs and ability to administer the program. Refuge Managers will determine and document:

(1) The design and scope of a refuge recreational use program after evaluating the wildlife-dependent uses that are appropriate, compatible, and practical at that refuge; the amount and type of visitation; constraints of the location; traditions/viewpoints of the local populace; legal commitments; other opportunities in the area; public interest; resource management concerns; and other criteria.

(2) A realistic demand for the activity. This is important because activities generally are harder to curtail or stop than to begin. Refuge Managers must have an eye to the future and be ready for possible changes in staffing, funding, or other program elements that may occur.

E. Follow an approved plan. Before administering priority uses or identifying and allowing mandated or non-priority uses at a refuge, the Refuge Manager should consult the refuge's CCP, visitor service management plan,

and other applicable step-down plans. The documents will outline program objectives and other specific information that will provide the guidance needed to manage these activities.

F. Ensure adequate resources. Refuge managers will:

(1) Offer wildlife-dependent recreational use programs only to the extent that staff and funds are sufficient to develop, operate, and maintain the program to safe, high quality standards. Refuge managers should remember that, in general, the greater the scope and complexity of a program, the greater the need for staff and money. Where wildlife-dependent recreational uses cannot occur at a refuge due to insufficient resources, Refuge managers will try to facilitate these programs through user fee programs and cooperative efforts, including memorandums of understanding, cost share agreements, sharing personnel with nearby refuges, and others. Conservation partnerships or other groups can help Refuge managers more effectively finance and administer recreational use programs on refuges by providing labor, funds, or other types of support. Where available and appropriate, Refuge managers should work with cooperating associations, volunteers, contractors, businesses, local communities, educational institutions, State and Tribal governments, other Federal agencies, conservation groups, other organizations, and the public, to minimize or reduce the costs of conducting recreational use programs. The community relations benefits of such an approach are effective and far-reaching.

(2) Seek opportunities to develop formal agreements, contracts, cooperative ventures, and community sponsorships to fund equipment and supplies, maintain facilities, conduct training, provide technical assistance, and help with other aspects of a quality recreational use program. Refuge managers should not enter into agreements that unnecessarily encumber lands and facilities or hinder meeting resource management objectives at the refuge.

1.11 Have we identified visitor service requirements on refuges? Yes. Service employees, volunteers, concessionaires, and other cooperators should conform to the following standards in planning, conducting, and evaluating all visitor services activities and facilities at refuges. These standards replace those outlined in the *Public Use Minimum Requirements Handbook* adopted by the Service in 1984.

A. Requirement 1. Develop a Visitor Services Plan. Through CCP's and visitor services plans, we will set goals, determine measurable objectives, identify strategies, and establish evaluation criteria for all visitor services. Careful planning provides the visiting public with opportunities to enjoy and appreciate fish, wildlife, and plants and other resources. As a result, the visiting public will develop an understanding and will build an appreciation of each individual's role in the environment today and into the future.

B. Requirement 2. Welcome and Orient Visitors. We will assure that national wildlife refuges are welcoming, safe, and accessible. We should regularly schedule some refuge staff to work weekends, and holidays (except Thanksgiving, Christmas, and New Years Day) and other anticipated periods of high public recreational use. We will provide visitors with clear information so they can easily determine where they can go, what they can do, and how to safely and ethically engage in recreational and educational activities. Facilities will be high quality, clean, well-maintained, and accessible. We will treat visitors with courtesy and in a professional manner.

C. Requirement 3. Provide quality hunting opportunities. Hunting is an appropriate use of wildlife resources of the System when compatible. Hunting programs will be of the highest quality, conducted in a safe and cost-effective manner, and, to the extent practicable, carried out in accordance with State regulations. (Reference 605 FW 2).

D. Requirement 4. Provide quality fishing opportunities. Fishing is an appropriate use of wildlife resources on units of the National Wildlife Refuge System when compatible. Fishing programs will be of the highest quality, conducted in a safe and cost-effective manner, and, to the extent practicable, carried out in accordance with State regulations. (Reference 605 FW 3).

E. Requirement 5. Provide quality wildlife observation and wildlife photography opportunities. Wildlife observation and wildlife photography (reference 605 FW 4 and 605 FW 5 respectively) are appropriate wildlife-dependent recreational uses of System lands when compatible. Visitors of all ages and abilities will have an opportunity to observe and photograph key wildlife and habitat resources of the refuge. Viewing and photographing wildlife in natural or managed environments will foster a connection between visitors and natural resources.

F. Requirement 6. Develop and implement a quality environmental education program. Through formal, curriculum-based environmental education tied to national and State education standards, we will advance public awareness, understanding, appreciation, and knowledge of key fish, wildlife, plant, and resource issues. Each refuge staff person will assess their potential to work with schools in providing an appropriate level of environmental education. We may support environmental education through the use of facilities, equipment, educational materials, teacher workshops, and study sites that are safe and conducive to learning. (Reference 605 FW 6).

G. Requirement 7. Interpret key resources and issues. We will communicate the most important fish, wildlife, habitat and other resource issues to visitors of all ages and abilities through effective interpretation. We will tailor messages and delivery methods to specific audiences and present them in appropriate locations. Through heightened awareness, we will inspire visitors to take positive actions supporting refuge goals and the System mission. (Reference 605 FW 7).

H. Requirement 8. Manage for appropriate recreational opportunities. The National Wildlife Refuge System Administration Act as amended by the National Wildlife Refuge System Improvement Act of 1997 states that compatible wildlife-dependent recreational uses are the priority public uses of the National Wildlife Refuge System (hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation) and will receive enhanced consideration over other general public uses. Volunteers, partners, recreation fees and concessions are tools available to assist us in managing these uses. We will only permit other uses when we determine that they are legally mandated, provide benefits to the Service, occur due to special circumstances, or facilitate one of the priority wildlife-dependent recreational uses. (Reference 605 FW 1).

I. Requirement 9. Communicate key issues with off-site audiences. Effective outreach depends on open and continuing communication between the refuge and the public. This communication involves determining and understanding the issues, identifying audiences, crafting messages, selecting the most effective delivery techniques, and evaluating effectiveness. Achieved results will further the mission of the System and purpose(s) of the refuges. See the National Outreach Strategy: A Master Plan for Communicating in the U.S. Fish

and Wildlife Service, and America's National Wildlife Refuge System: 100 on 100 Outreach Campaign.

J. Requirement 10. Build volunteer programs and partnerships with refuge support groups. Volunteer and refuge support groups fortify refuge staffs with their gift of time, skills, and energy and are integral to the future of the System. Refuge staff will initiate and nurture relationships with volunteers and refuge support groups, and will continually support, monitor, and evaluate these groups with the goal of fortifying important refuge activities. The National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (P.L. 105–242) strengthens the System's role in developing effective partnerships with various community groups. Whether through volunteers, refuge support groups, or other important partnerships in the community, refuge personnel will seek to make the refuge an integral part of the community, giving rise to a stronger System.

Draft Hunting Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 2 Hunting 605 FW 2.1

2.1 What is the purpose of this chapter? This chapter provides the Fish and Wildlife Service's (Service) policy governing the management of recreational hunting on units of the National Wildlife Refuge System (System or we).

2.2 To what programs does this chapter apply? The policies contained in this chapter apply to recreational hunting within the System. Refer to other chapters or regulations governing policies and procedures addressing related activities such as guiding (604 FW 7) and field trials (631 FW 5).

2.3 What is our policy on hunting on refuge lands? The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. We recognize hunting as a healthy, traditional outdoor pastime, deeply rooted in American heritage, and when managed appropriately, can instill a unique understanding and appreciation of wildlife, their behavior, and their habitat needs. Hunting also is an important wildlife management tool on refuges. Hunting is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will invest our resources and imagination in providing high quality hunting experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide public hunting opportunities. Hunting programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. We rely on close cooperation and coordination with State fish and wildlife management agencies in managing hunting opportunities on refuges and in setting refuge population management goals and objectives. Regulations permitting hunting of resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote high quality hunting programs on refuges.

2.4 *What are the objectives for our hunting programs?* The objectives of the System hunting program are to promote public understanding of and increase public appreciation for America's natural resources, to manage wildlife populations at optimum levels, and to provide opportunities for high-quality recreational and educational experiences.

2.5 What are the authorities that allow hunting on the System? Refer to 605 FW 1 for laws that govern hunting on System lands.

2.6 Do we have common definitions for hunting terms? Yes. The following are definitions of terms used in reference to hunting.

A. Open to the public. Open to public hunting means we allow individuals who hold, if required, valid licenses, permits, stamps or other documents to enter and take specific wildlife species. Areas open to hunting may differ from areas open to the general public for other recreational activities. We note this distinction on signs and in outreach materials, such as general refuge or hunting brochures.

B. Quality hunting experience. A quality hunting experience is one that:

(1) Maximizes safety for hunters and other visitors;

(2) Encourages the highest standards of ethical behavior in taking or attempting to take wildlife;

(3) Is available to a broad spectrum of the hunting public;

(4) Contributes positively to or has no adverse affect on population management of resident or migratory species;

(5) Reflects positively on the individual refuge, the System, and the Service;

(6) Provides hunters uncrowded conditions by minimizing conflicts and competition among hunters;

(7) Provides reasonable challenges and opportunities for taking targeted species under the described harvest objective established by the hunting program. It also minimizes the reliance on motorized vehicles and technology designed to increase the advantage of the hunter over wildlife;

(8) Minimizes habitat impacts;

(9) Creates minimal conflict with other priority wildlife-dependent recreational uses or refuge operations; and

(10) Incorporates a message of stewardship and conservation in hunting opportunities.

C. Special weapons hunts. Special weapons hunts limit the choice of weapons individuals can use in the field to take big game (e.g., elk, deer). Bows, shotguns, and black powder guns may be classified as special weapons. We generally authorize special weapons hunts with appropriate conditions, such as ''Archery Only,'' ''Primitive Weapons Only,'' or ''Shotgun Only,'' unless these hunts are spatially separated by season.

D. Inviolate sanctuaries. A national wildlife refuge, or portions thereof, acquired or established in one of the following ways:

(1) Acquired with the approval of the Migratory Bird Conservation Commission (MBCC) for the purpose of an inviolate sanctuary;

(2) Established by an instrument or document that states that we intend to manage the area as an ''inviolate sanctuary for migratory birds'' or to fulfill the purpose of the Migratory Bird Conservation Act.

E. Tournament hunting. A hunting competition for monetary or other prizes, such as a ''Big Buck'' contest.

2.7 When do we address the decision to allow hunting for proposed additions to the National Wildlife Refuge System? When lands and waters are under consideration for addition to the System, the Refuge Manager will make an interim compatibility determination on any existing priority public uses. The record of decision establishing or expanding hunting on the refuge must document the completion of such determinations. The results of these determinations are in effect until the completion of a Comprehensive Conservation Plan (CCP). It is during the development of the CCP and implementation of the National

Environmental Policy Act (NEPA) that we accept and incorporate public comments into the hunting decision on the refuge.

2.8 How do we open System lands to hunting? The decision to open a refuge to hunting depends on the provisions of laws and regulations applicable to the specific refuge and a determination by the Refuge Manager that opening an area to hunting will be compatible. This decision must also be consistent with the principles of sound wildlife management, applicable wildlife objectives, and otherwise be in the public interest (see 50 Code of Federal Regulations (CFR) 32.1).

A. Specific conditions. The following conditions apply to hunting on certain units of the System.

(1) Inviolate sanctuaries. We may allow hunting of migratory game birds on no more than 40 percent of the total area unless the Secretary finds that taking of any such species in more than 40 percent of such area would be beneficial to the species (NWRSAA). If we open only 40 percent of an inviolate sanctuary to migratory bird hunting, the opened area could conceivably contain 100 percent of the habitat for migratory birds and comply with the law. However, we must first determine if the proposal is compatible with the purposes of the refuge and the System mission. Before we can open more than 40 percent of an inviolate sanctuary to hunting, we must publish the reasons for doing so in the **Federal Register**. Because of this requirement, the Director, under delegation from the Secretary, must approve all proposals to open more than 40 percent of an inviolate sanctuary to migratory bird hunting. Regional Directors retain the authority to open more than 40 percent of areas on refuges that are not inviolate sanctuaries. Refuge managers must carefully evaluate all such proposals to ensure the proposed action will be compatible. Inviolate sanctuary classification imposes no limits on hunting non-migratory birds or other game species.

(2) Waterfowl Production Areas (WPAs). WPAs are open to hunting in accordance with State law (50 CFR 32.1) as long as it is compatible. A hunting plan or rulemaking document is not necessary to open these areas to hunting. We may restrict WPA hunting programs and under 50 CFR 32.1, we may also close WPAs to hunting and other public use if circumstances warrant.

(3) Wetland easements. We have no authority over hunting on wetland easements, which we most often acquire as part of the Small Wetland Acquisition Program, unless we purchased specific rights with the easements. For these easements, the landowner has usually retained all rights to control public access, including for hunting and other recreational uses.

(4) Easement refuges. The rights acquired with the individual easement refuge determines our control of hunting on easement refuges. The Regional Director is responsible for determining the extent of our control over hunting on these areas. If we control hunting, the Refuge Manager must follow all procedures required to open a refuge to hunting.

(5) Farm Service Agency Easements formerly Farmers Home Administration (FmHA)). We have no authority over hunting or other forms of public use on easements obtained through the various Farm Service Agency inventory property easement programs of 1985, 1990, and 1996. The landowner retains the right to control access for hunting and other recreational uses.

(6) National wildlife refuges in Alaska. The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-3233 and 43 U.S.C. 1602–1784) opens all national wildlife refuges in Alaska to hunting under applicable Federal and State law as long as it is compatible (50 CFR 36.32). A hunting plan or rulemaking document is not necessary to permit hunting on these refuges. We may prohibit or restrict the taking of wildlife only in conjunction with notices and hearings under the requirements of 50 CFR 36.42 regarding public participation and closure procedures. Local rural residents may hunt wildlife for subsistence uses in compliance with applicable Federal and State laws. Under ANILCA, non-wasteful subsistence use of wildlife by rural residents has priority over other consumptive uses permitted on national wildlife refuges in Alaska.

B. Evaluation criteria for hunting programs. We will use the following criteria and standards to evaluate hunting programs on units of the System:

(1) Compatibility. A hunting program must be compatible with the purpose(s) of the refuge and the System mission.

(2) Biological integrity, diversity, and environmental health. We maintain, or contribute to the maintenance of, populations of native species. We design our wildlife population management strategies to support accomplishing refuge purposes while maintaining or restoring biological integrity, diversity, and environmental health (see 601 FW 3). We formulate refuge goals and objectives for population management by considering natural densities, social structures, and population dynamics at the refuge level and population objectives set by national plans and programs—such as the North American Waterfowl Management Plan—in which the System is a partner.

(3) Relationship with other public use programs. An integrated approach to providing opportunities for compatible wildlife-dependent recreational uses will minimize conflicts between individuals participating in these uses. We will evaluate time and space scheduling and zoning as methods to ensure opportunities for quality experience among different user groups.

(4) Resources. Providing quality recreational experiences for the public requires appropriate funding, facilities, and staff. The House Report accompanying the House of Representatives version of the National Wildlife Refuge System Improvement Act of 1997 (H. Rpt. 105–106) encourages refuge managers to take reasonable steps to obtain outside assistance from States and other conservation interests, if adequate financial resources are not available to manage a priority use in a compatible manner. Refuge managers should work closely with State, community, and conservation partners to help obtain necessary resources to manage the priority wildlife-dependent recreational use programs. Potential sources of support include the following: hunting organizations, user fees for hunting; cooperating with State, local, or Tribal agencies; and assistance from refuge support groups or volunteers. We encourage refuge managers to seek and implement other opportunities to obtain additional resources as they become available.

(5) Evaluation and monitoring. Refuge managers must monitor and evaluate their hunting programs regularly. Refuge managers should evaluate both the quality of the recreation experience and the effects of the activity on refuge resources. A wide variety of evaluation tools exist, from simply asking the hunting public how they rate their experience to contracting with a university or private company to conduct a formal survey. If a Refuge Manager decides to use a survey to evaluate the hunting experience, he or she must receive approval from the Office of Management and Budget on the information collection process before conducting any public surveys.

C. Consultation and coordination. (1) Coordination with states. When a refuge, or portion thereof, is open to hunting, we allow hunting within the

framework of applicable State regulations. We consult with the State, Tribes, and other appropriate authorities during the development of hunting programs and whenever we plan significant changes. Refuge regulations must be consistent with State regulations, to the extent practicable. The use of more restrictive regulations requires consultation with the State. We must list regulations that are more restrictive than State regulations, such as seasons and fishing hours as refuge-specific regulations in 50 CFR part 32. Refuge-specific regulations must not weaken existing State laws and regulations. We must justify deviations from State regulations in the refuge hunting plan or amendments to that plan.

(2) Endangered species consultation. We will review all hunting programs annually to determine if they may affect, adversely or beneficially, threatened or endangered species and their habitats. The Refuge Manager will initiate consultation as appropriate, under Section 7 of the Endangered Species Act and intra-Service consultation procedures.

(3) Public involvement. The appropriate level of public involvement must accompany new or significant changes to existing hunting programs. Refuge managers must plan efforts well in advance of the proposed changes in order to obtain as much involvement from groups and individuals as possible. A variety of methods are available for the Refuge Manager to use to involve and inform the public, including public meetings, workshops, news releases, and mailings to interested groups. We encourage refuge managers to continue to use these and other methods. We require an outreach plan developed in coordination with Regional External Affairs Offices for new hunting programs or any major changes affecting existing programs.

D. Documentation required to open a refuge to hunting. The Refuge Manager must submit the following documents to the appropriate staff in the Regional Office to open a refuge to hunting. The Regional Office then forwards a copy of these documents to the National Wildlife Refuge System Headquarters for preparation of a rulemaking document.

(1) Step-down hunting plan. This plan should be a step-down plan of the refuge's CCP which must include a compatibility determination on the hunting program. If the unit has not yet completed a CCP, the step-down hunting plan must contain a compatibility determination until the CCP is completed. The hunting plan should be an appendix to the overall plan for providing public uses on refuges. The plan will provide documentation of the hunting allowed on a refuge, including the relationship of hunting to refuge purpose(s), goals, and objectives and the System mission. The suggested format for a refuge hunting plan is labeled as Exhibit 1 in this chapter.

(2) Appropriate NEPA documentation.

(3) Appropriate decision documentation.

(4) Section 7 evaluation. (See Exhibit 2 for information on Section 7 evaluation.)

(5) Copies of letters requesting State, and, where appropriate, tribal involvement and the results of the request.

(6) Draft news release.

(7) Outreach plan. (We label a Directorate-approved outline for an Outreach Plan as Exhibit 3.)

2.9 Who prepares and reviews a refuge hunting plan? The Refuge Manager, with technical assistance as needed from the Regional Office and State and Tribal wildlife agencies, is responsible for preparation of the hunting plan. The Regional Director approves the plan before the rulemaking process begins. The Regional Office sends copies of the approved hunting plans to Headquarters (including the approved outreach plan) for concurrence. During the rulemaking process, Headquarters staff use the hunting plan as reference material and supporting documentation. The Refuge Manager must annually review hunting plans for each refuge where we allow hunting. The Refuge Manager must refer to this plan in the Refuge Public Use Plan or CCP and provide overall documentation of the hunting allowed on a refuge.

2.10 What information do we need for publication in the ***Federal Register****?* The Refuge Manager must submit information about what species we propose to open for hunting and the conditions of the proposed hunt once we determine the proposal to be compatible and document the results in an approved hunting plan. The Regional Liaison must forward copies of this information to the Federal Register Liaison at Headquarters for the development of the proposed and final refuge-specific regulations (codified in 50 CFR), which we publish in the **Federal Register**. If a Refuge Manager proposes to open more than 40 percent of an inviolate sanctuary to migratory game bird hunting, we must also publish the justification in the **Federal Register**.

2.11 What is the refuge-specific regulations process? The refuge-specific regulation process is outlined below:

A. Headquarters must publish in the **Federal Register**, proposed refuge-specific regulations pertaining to a refuge's hunting program that are necessary to conduct that program prior to them becoming effective. Refuge managers must forward all refuge-specific regulations through appropriate channels to Headquarters for clearance and submission to the **Federal Register**. The refuge is open to hunting officially after the effective date of the final rule. Hunting can begin concurrently with or after the opening of the State season.

B. Refuge managers must review these regulations and the refuge hunting plan annually to ensure compatibility and consistency of the hunting program with existing laws and regulations. Refuge managers must submit any amendments (additions, deletions, or modifications) each year to the designated regional hunting and fishing program coordinator who, in turn, sends that information to Headquarter's Federal Register Liaison for inclusion in the rulemaking documents for publication in the **Federal Register**. Headquarter's Federal Register Liaison must receive this information by January 31 each year to allow sufficient time for compilation and review by concerned program offices and the Solicitor, signature by the Assistant Secretary, and the Departmental review for both proposed and final rules. This includes a 30-day public comment period on the proposed rule. We cannot publish a refuge opening without the complete hunting package. If no amendments are necessary, refuge managers should submit a negative response to that effect to the Regional Office (to the attention of the hunting and fishing program coordinator). Refuge-specific regulations should be standard and consistent in format throughout the System. We include guidelines for preparing and submitting regulations and amendments in Exhibit 4.

2.12 How do we revise a hunting plan? The Refuge Manager may approve all revisions in hunting plans except major revisions. Major revisions in hunting plans (*e.g.,* addition of big game to a hunting program, designating hunts for special weapons use only) must occur as an amendment to the hunting plan unless the original plan included specific conditions under which that revision could occur. The preparation and approval of amendments follows the same guidelines as preparation and approval of the original plan. Submit only the revised portion of the plan for approval to the Regional Office. The

Regional Director approves revisions only when Headquarters has already listed the refuge in 50 CFR as open to that particular category of hunting. Otherwise, refuge managers must submit the amended hunting plan for rulemaking. Opening a refuge to new categories requires the appropriate National Environmental Policy Act (NEPA) findings.

2.13 What are the guidelines for refuge hunting programs? We should plan, manage, conduct, and evaluate refuge hunting programs on a consistent basis in ways that ensure hunter and visitor safety, and promote positive values such as fair chase, high ethical standards, and respect for the resource. Hunting on refuges must have the attributes of a quality hunt as defined in section 2.6B. The following guidelines should help ensure quality opportunities are available.

A. Permits. We require hunters to have all applicable Federal, State, and Tribal licenses or stamps in their possession. We can issue refuge permits to limit participation or gather information. If we use refuge permits to limit hunter numbers, we will issue them on a random basis to the public. Refuge managers should avoid complicated application processes that require additional resources. Application processes should be flexible to provide an opportunity to all potential hunters. Under ANILCA, qualified rural subsistence hunters are given a preference to harvest game on Alaska refuges as outlined by the rules and regulations established by the Federal Subsistence Board. We should coordinate with Tribal and State application and lottery processes where practicable.

B. Fees. The Refuge Manager makes the decision to charge a fee in coordination with the Regional Office. We have the authority to charge fees for applications, refuge permits, and the use of facilities (*i.e.,* hunting blinds) under existing recreation fee programs. We use fees collected for visitor service enhancement projects, and resource protection. The authority under which we collect fees contains stipulations on how we may reinvest the monies. The Regional Fee Coordinator can assist with the approval of fees as well as provide information on the appropriateness of fund distribution.

C. Zoning recreational use. We desire a balanced hunting program that allows a variety of quality hunting opportunities. For example, designating areas for youth hunts, establishing areas that provide access for hunters with disabilities, establishing ''special weapons'' areas, designating areas for seasonal or daily closures for consumptive and non-consumptive use, designating areas for non-motorized boat use, and establishing areas where hunters use methods to reduce crippling loss, help us achieve a balanced hunting program and increase the quality of the experience. We can also use zoning to reduce conflicts between hunters and other users.

D. Law enforcement. Law enforcement is an important part of any hunting program. It is used to ensure legal and equitable utilization of fish and wildlife resources on refuges, as prescribed by law. Law enforcement is also used to obtain compliance with laws and regulations necessary for proper administration, management, and protection of the System. The effort invested should be sufficient to protect human safety, wildlife populations, and ensure compliance with regulations based on past experiences and current circumstances.

E. Hunter access and vehicle control. Refuge managers must carefully plan, manage, and evaluate access and vehicle control to retain high levels of undisturbed opportunities. Refuge managers should strongly encourage those opportunities not dependent upon the use of motorized vehicles. We can make exceptions to general access restrictions for hunters with disabilities when necessary to facilitate their experience, and when compatible with resource management objectives. For example, refuge managers may issue special use permits to hunters with certain disabilities for access to hunt blinds, or retrieval of downed game. Refuge managers could require specific physician's documentation before providing the disabled hunter a special use permit.

F. Camping. We may allow camping on refuges when it is necessary to support hunting opportunities. Camping is appropriate only when no reasonable (based on time, distance and expense) lodging opportunities are available off-refuge and when staff resources needed to manage camping do not detract from the quality of another priority wildlife-dependent recreational use. Large refuges in the western United States, refuges in Alaska, and some remote refuges allow camping under this criteria. See the Appropriate Refuge Uses chapter (603 FW 1) for additional information.

G. Hunting by service staff. Service employees are subject to the same rules and regulations as the general public. If only limited hunting opportunities exist, refuge managers should discuss with Service employees the need to be sensitive to the possibility of the public perception of conflict of interest. We never authorize Service employees to wear uniform components outside of their official capacity. When employees participate in off-duty hunting opportunities, they are not authorized and, therefore, should never wear uniform components (e.g., uniform ball caps, uniform jeans). When Service employees actively participate in assigning limited hunting permits, they will not participate in that particular hunt on those affected refuge lands. In addition, personnel may not use means of access to hunt in areas that are not available to the general public.

H. Communication materials. Professionally developed outreach materials will benefit refuge managers by providing clear and thorough information to hunters. Brochures must conform with the U.S. Fish and Wildlife Service Graphics Standards and be consistent with refuge-specific regulations. Contact your Regional Publications Coordinator for graphic standards. Refuge managers do not need to include regulations and dates that are identical to State seasons. Include information that encourages hunters to hunt safely and ethically. We encourage refuge managers to use electronic media, such as the Internet, to distribute information. Refuge managers should work with Regional Office staff to provide information on standards and guidelines for all communications materials.

I. Equipment. Refuge managers may place limits on certain equipment such as decoys, boats, tree stands, and type of firearm or ammunition if they determine that such limits reduce crippling loss, resource damage, hunter conflicts, or improve the quality of the hunt.

J. Boundary hunting. We discourage boundary hunting adjacent to closed areas of refuges. We can alter boundary lines or habitat, or eliminate parking areas and access roads, to distribute hunters or modify wildlife use patterns in ways that make boundary hunting less appealing. Refuge managers must use retrieval zones sparingly and only to prevent waste by allowing the retrieval of dead or crippled game. Prior to establishing these zones, managers should consider adjusting hunt boundaries as well as the cost of signing and enforcing restrictions. Limit the entry of hunters into closed areas wherever possible. Retrieval of big game may require entry, with permission, into closed areas.

K. Check stations. Use check stations only as a means to monitor the hunt, gather important information that we cannot obtain in a less expensive

manner, or gather biological information about animal populations. Refuge managers should evaluate the continued use of check stations periodically to determine if there is a more cost-effective means of providing quality hunting services. Use permanent check stations only to control the hunting area access and not to enforce hunting regulations.

L. Data collection. Refuge managers should evaluate hunting programs to determine if we are meeting objectives. Refuge managers should consult with the State regarding data collection needs and survey methods.

M. Proficiency testing. Generally, we will not require mandatory testing or qualifications above State requirements. If a Refuge Manager wants to implement a proficiency test more restrictive than that required by the State, the Refuge Supervisor must approve the test. For example, if hunters were not allowed to take black ducks or mallard hens on a refuge but were permitted to take gadwalls, the hunter could be required to show proficiency in the identification of gadwalls and other waterfowl.

N. Hunting with dogs. The use of properly trained dogs is an important part of the American hunting tradition, enhances the quality of the hunting experience, and can reduce the loss of crippled game. We recognize the long relationship between dogs and hunters. However, in our effort to emphasize high-quality visitor experiences which minimize visitor use conflicts and wildlife disturbance, we must make distinctions between various uses of dogs for hunting. Not all uses of dogs for hunting will fit with System quality hunting experience goals.

We do not allow hunting dogs in areas closed to hunting or other public use and we only allow their use in the following circumstances:

(1) Retrievers. We encourage the use of trained retrieving dogs for waterfowl. Emphasize the value of trained retrievers in reducing the loss of downed birds in outreach materials promoting the hunting program.

(2) Pointing and flushing dogs. Typically, hunters use pointing and flushing dogs in pursuit of upland game birds. Well-trained pointing and flushing dogs enhance a hunting experience by creating more opportunities and finding and retrieving downed birds.

(3) Pursuit hounds. Refuge managers will carefully consider the impacts of the use of pursuit hounds on the refuge. When evaluating compatibility of hunting with pursuit hounds, a Refuge Manager will include the following discussion points in the compatibility determination:

(a) The likelihood of pursuit hounds injuring or annoying wildlife to such an extent as to significantly disrupt normal behavioral patterns of non target species;

(b) The likelihood of pursuit hounds interfering with the quality of the experience of other refuge visitors;

(c) The likelihood of pursuit hounds venturing out of open hunting areas and entering closed areas or adjacent private lands; and

(d) The effects of pursuit hounds ranging out of the hunter's control and being left on the refuge for an extended period of time.

O. Special weapons hunts. We offer hunting opportunities to as broad a spectrum of the public as possible. Consider special weapons hunts, as defined in section 2.6C, under some of the following conditions:

(1) Safety. Extremely dense cover, agricultural fields, or other vegetation characteristics may create situations where rifles are not appropriate. Configuration of hunt areas, such as long, narrow corridors or occupied inholdings, may also create situations where we should only allow specific weapons due to safety considerations.

(2) Limited harvest. In cases where there are relatively low populations or other limited harvest opportunities, offering special weapons hunts could be a method to provide hunting opportunities where they would otherwise not exist.

(3) State seasons for special weapons. In some States, the State designates separate seasons for specific weapons. When the State conducts archery, black powder, and other special seasons, it may be appropriate for refuge hunts to accommodate them. The decision as to whether a special weapons hunt approved by the State is compatible on the refuge lies with the Refuge Manager.

P. Falconry. If falconry is deemed appropriate and compatible on the refuge, it must be conducted under applicable Federal, State, and Tribal regulations. Refuge managers should consider:

(1) Will the refuge falconry hunting area provide a quality and safe falconry experience? For example, is the area large enough for a raptor to fly, stoop, and capture prey and be unobstructed by barbed wire fences or power lines?

(2) Will endangered or threatened species be harassed (see 50 CFR 17.11)?

(3) Will falconry negatively impact adjacent land uses (e.g., a nearby poultry farm) or will adjacent land uses affect the falconry on the refuge (e.g., a neighboring race track)?

Q. Nontoxic shot. Hunters may possess only nontoxic shot that conforms with the standards identified in 50 CFR 32.2(k) while hunting with shotguns or muzzle loaders on WPA's, or on certain other areas of the System. This regulation does not apply to turkey and deer hunters using buckshot or slugs, except as specifically limited by refuge-specific regulations.

R. Night hunting. We allow night hunting when it is appropriate and compatible with the purpose(s) of the refuge and the mission of the System. If a refuge is generally not open after sunset, refuge managers may make an exception and allow night hunting. Refuge managers must base the decision on specific refuge objectives and not historical use. Reference the General Recreation Guidance Chapter, 605 FW 1, for additional information about after-hours activities.

S. Tournament hunting. We prohibit this type of hunting on System lands and waters unless we make a specific determination that the event builds appreciation for and an understanding of fish and wildlife resources, does not reasonably interfere with other refuge visitors, and if prizes of only nominal value are awarded. Refer to the Appropriate Uses Chapter (603 FW 1) for additional discussions of competitive events.

T. Youth hunting. We encourage refuge managers to set aside areas or times to promote hunting by children or under represented groups. Experiencing hunting in a safe environment and exposure to proper hunting methods is important to developing life skills and public support for healthy ecosystems. Refuge managers should take advantage of these opportunities to educate young hunters and their parents about the importance of wildlife management.

2.14 How do we close a refuge to hunting? The Refuge Manager may close all or any part of a refuge that we have opened to hunting whenever necessary to protect the resources of the area or in the event of an emergency endangering life, property, or any population of wildlife, fish or plants (50 CFR 25.21).

A. Emergency closure. We do not require advance public notice for closure under emergency conditions. We will notify the public of such closures by signs, special maps, or other appropriate methods.

B. Non emergency closure. We will evaluate non-emergency closure of a refuge hunting program for impacts on wildlife populations, ecosystems, and priority recreation uses. If the impacts are likely to be major or controversial, we will prepare an environmental assessment and follow the public

participation process identified in the National Environmental Policy Act (NEPA). We will evaluate the impacts of the decisions and give appropriate notification to the public. In Alaska, temporary closures or restrictions relating to the taking of wildlife will not be effective prior to the notice and hearing that we will conduct for an emergency closure in the vicinity of the affected area(s) and may not exceed 12 months.

Exhibit 1—Refuge Hunting Plan Format

I. Introduction

Include a general description of the refuge and information pertinent to the planned hunting program. If a Refuge Manager develops this hunting plan as a portion of an integrated public use plan, we may not require this information. Include non repetitive general information in the Comprehensive Conservation Plan.

II. Conformance with Statutory Authorities

Explain how the program will be compatible with the System mission, the goals and objectives of the refuge, and the purpose(s) for which the refuge was established. Include projections of the resources (staff and funding) needed to conduct the program and their sources. Include an explanation of how the program will address the requirements of applicable authorities.

III. Statement of Objectives

List the major refuge objectives and the specific objectives of the hunting program. Describe how hunting will impact the refuge objectives.

IV. Assessment

Evaluate the hunting resources on the refuge populations and habitats. Points to discuss include, but are not limited to, the following:

a. Will populations sustain hunting and still support other wildlife-dependent priority uses?

b. Do target species and other wildlife compete for habitat?

c. Do target species prey on other species at unacceptable levels?

V. Description

Describe the program in detail, using graphics as needed. The description should include:

a. Areas of the refuge that support target species.

b. Areas of the refuge to be opened to hunting.

c. Species designated for hunting and hunting periods.

c. Justification of permit system, if required.

d. Consideration of user fees.

e. Consultation and coordination procedures with States, including justification of refuge-specific regulations.

f. Methods of control and enforcement.

g. Staffing and funding needs.

h. Consideration of providing opportunities for hunters with disabilities.

VI. Measures Taken To Avoid Conflicts With Other Management Objectives

a. *Biological conflicts.* Include section 7 consultation, and other measures proposed to minimize or eliminate conflicts with endangered species or non target species.

b. *Social conflicts.* Include proposed measures that minimize or eliminate conflicts with other user groups.

VII. Hunt Specifics

a. Refuge-specific regulations.

b. Outreach plan.

c. Hunter application and registration procedures (if needed).

d. Description of hunter selection process (if needed).

e. Draft news release regarding the hunting program.

f. Description of hunter orientation, including pre hunt scouting opportunities.

g. Hunter requirements:

(1) State determined age requirement.

(2) Allowable equipment.

(3) Licensing and permits.

(4) Reporting requirements.

(5) Hunter training and safety.

(6) Other information (use of dogs, falconry, etc.)

VIII. Compatibility Determination

IX. Appropriate NEPA Documents

X. Evaluation

a. Monitoring and reporting use levels and trends.

b. Surveying needs of the hunting visitor.

c. Are we meeting program objectives?

d. Do we need to resolve any conflicts?

e. Refuge/Regional Office review schedule.

Exhibit 2—Priority Wildlife-Dependent Recreation (Hunting)

Use the following terminology for your Section 7 determination as to whether the opening of your refuge to hunting and/or fishing will affect the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species within the System.

Types of Effects

1. No effect: The appropriate conclusion when the Service determines that a proposed Service action will not affect a listed species or designated critical habitat.

2. Is not likely to adversely affect: The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.

3. Is likely to adversely affect: The appropriate finding in a biological assessment (or conclusion during information consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed Service action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of ''is not likely to adversely affect''). In the event the overall effect of the proposed Service action is beneficial to the listed species but is also likely to cause some adverse effects, then the proposed Service action ''is likely to adversely affect'' the listed species. If incidental take is anticipated to occur as a result of the proposed action, an ''is likely to adversely affect'' determination should be made. This determination requires the initiation of formal intra-Service section 7 consultation (see definition of ''informal intra-Service consultation'').

4. May affect: The appropriate conclusion when a proposed action may pose *any* effects on listed species or designated critical habitat. When the Federal agency (in this case the Service) proposing the action determines that a ''may affect'' situation exists, then the Service must initiate formal consultation or seek written concurrence from the involved Service programs that the action ''is not likely to adversely affect'' listed species.

5. Is likely to jeopardize proposed or candidate species/adversely modify proposed critical habitat: The appropriate conclusion when the Service identifies situations where the proposed Service action is likely to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. If this conclusion is reached, intra-Service conference is required.

Types of Consultation

1. Formal intra-Service consultation: A process between a Service program authorizing an action and another Service program affected by that action that: (1) Determines whether a proposed Service action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with the Service program that authorizes the action providing a written request and submitting a complete initiation package to the affected Service program; and (3) concludes with the issuance of a biological opinion and incidental take statement by the affected Service program. If a proposed Service action may affect a listed species or designated critical habitat, formal intra-Service consultation is required (except when the involved Service programs concur, in writing, that a proposed action ''is not likely to adversely affect'' listed species or designated critical habitat). (50 CFR 402.02; 50 CFR 402.14)

2. Informal intra-Service consultation: An optional process that includes all discussions and correspondence between Service programs, prior to formal intra-Service consultation, to determine whether a proposed Service action may affect listed species or critical habitat. This process allows the Service to utilize its in-house expertise to evaluate a Service program's assessment of potential effects or to suggest possible modifications to the proposed action

which could avoid potentially adverse effects. If a proposed Service action may affect listed species or designated critical habitat, formal intra-Service consultation is required (except when the involved Service programs concur, in writing, that a proposed action ''is not likely to adversely affect'' listed species or designated critical habitat). (50 CFR 402.02; 50 CFR 402.13)

Exhibit 3—Outreach Plan Summary

I. Issue: (State the issue in one or two sentences.)
II. Basic Facts About the Issue:
III. Communication Goals:
IV. Message:
V. Interested Parties:
VI. Key Date:
VII. Strategy:

Exhibit 4—Guidelines for Preparation of Refuge-Specific Hunting Regulations

Hunting regulations on national wildlife refuges accomplish three major purposes: They protect the resource, manage it, and ensure safety. State hunting regulations generally provide the framework for meeting these three criteria. When State regulations fall short of meeting these criteria, refuge-specific regulations are necessary. These regulations should focus primarily on management of the wildlife resource and should be enforceable. For example, if we require permits on a specific refuge, a statement that we require special refuge permits is all that is necessary. Details are not appropriate in the regulations. Address details in a leaflet or the permit application. Also, do not submit text for your refuge unless it represents a CHANGE to the existing language in part 32. If you are adding conditions to those already published, state that these are ''adds'' and indicate where you want them inserted in the text.

Duplications of existing 50 CFR provisions. When writing your regulations, check 50 CFR to avoid duplication. For example, in Part 27, Prohibited Acts, Section 27.31 restricts motor vehicles to ''designated routes of travel. * * * delineated on maps by the Refuge Manager;'' Section 27.81 adequately covers possession of alcohol; and Section 27.95 prohibits setting fires.

Duplication of State regulations. 50 CFR 32.2 (d) states ''Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulation.'' Therefore, do not repeat State bag limits, seasons, etc., in the refuge-specific regulations. Indicate differences in a cover memo that justifies differences and deviations.

Preparation of refuge-specific regulations. List shell limits, bag limits, seasons, and hours that differ from the State's in the refuge-specific regulations.

Use the following as an example for your submission for modifications to existing text:

Section 32.42 Minnesota.

Big Stone National Wildlife Refuge

B. Upland Game Hunting.

Replace the preamble to read as follows:

You may hunt partridge, pheasant, wild turkey, gray and fox squirrel, cottontail and jack rabbit, red and gray fox, raccoon, and striped skunk on designated areas of the refuge subject to the following conditions:

Add new conditions B.2. and B.3. to read as follows:

B.2. You may hunt fox, raccoon, and striped skunk only during open seasons for other small game species. You may not use dogs while raccoon hunting.

B.3. You may hunt turkey only if you have a valid State turkey hunting permit in your possession.

Use the following example for an addition of a refuge to part 32:

Section 32.20 Alabama.

Grand Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: We require a refuge permit.

B. Upland Game Hunting. We allow hunting of squirrel and rabbits on designated areas of the refuge subject to the following condition: We require a refuge permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions: We require a refuge permit.

D. Sport Fishing. [Reserved]

Draft Recreational Fishing Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 3 Recreational Fishing 605 FW 3.1

3.1 What is the purpose of this chapter? This chapter provides the Fish and Wildlife Service's (Service) policy governing the management of recreational fishing on units of the National Wildlife Refuge System (System or we).

3.2 To what programs does this chapter apply? The policies contained in this chapter apply to recreational fishing on national wildlife refuges, waterfowl production areas, and coordination areas, which are all units of the System.

3.3 What is our policy on fishing on refuge lands? The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. We recognize fishing as a traditional outdoor pastime that is deeply rooted in America's natural heritage. Fishing is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will especially invest our resources in providing high quality fishing experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide to the public fishing opportunities. Our fishing programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. The Service's Division of Fish and Wildlife Management Assistance and Habitat Restoration has many field offices with a broad range of expertise that are available to the Refuge Manager when planning and managing fishing programs. We encourage refuge managers to take advantage of this important resource. We rely on close cooperation and coordination with State fish and wildlife management agencies in managing fishing opportunities on refuges and in setting refuge population management goals and objectives. Regulations permitting fishing within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans. We encourage refuge staff to take advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

3.4 What are the objectives for our fishing programs? The objectives of the System's fishing program are to: effectively maintain healthy and diverse fish population resources through the use of scientific management techniques; to promote public understanding of, and increase public appreciation for, America's natural resources and the Service's role in managing the System; to provide opportunities for high-quality recreational and educational experiences; and to minimize conflicts between anglers and other visitors.

3.5 What are the authorities that allow fishing on the System? Refer to 605 FW 1 for laws and Executive orders that govern fishing on System lands.

3.6 Do we have common definitions for fishing terms? The following are definitions of terms used in reference to fishing.

A. Open to the public. Open to the public for fishing means we allow fishing by any individual who holds, if required, a valid license, permit(s), stamp(s) or other document allowing the taking of a specific species of fish on System waters. Areas open to fishing may differ from areas open to the general public for other recreational activities. We note this distinction through the use of signs and outreach materials, such as general refuge brochures or fishing brochures.

B. Quality fishing experience. A quality fishing experience is one that contributes to management objectives and accomplishes the following:

(1) Maximizes safety for anglers and other visitors;

(2) Causes no adverse impact on populations of resident or migratory species, native species, threatened and endangered species, or habitat;

(3) Encourages the highest standards of ethical behavior in regard to catching, attempting to catch, and releasing fish;

(4) Is available to a broad spectrum of the public that visits, or potentially would visit, the refuge;

(5) Provides reasonable accommodations for individuals with disabilities to participate in refuge fishing activities;

(6) Reflects positively on the System;

(7) Provides uncrowded conditions;

(8) Creates minimal conflict with other priority wildlife-dependent recreational uses or refuge operation;

(9) Provides reasonable challenges and harvest opportunities; and

(10) Increases the visitors understanding and appreciation for the fisheries resource.

C. Native fisheries. Fish that, other than as a result of an introduction, historically occurred in a specific watershed. By ''historically'' we mean a period identified as time before European contact or settlement.

D. Tournament fishing. A fishing competition for monetary or other prizes.

E. Shellfish harvest. The recreational harvest of abalone, clams, crabs, crayfish, lobster, mussels, oysters, scallops, shrimp, or other marine and freshwater invertebrates.

F. Nontoxic tackle. A weighted tackle (jigs and sinkers) made of materials other than lead or lead alloys.

G. Nonnative/alien species. Any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

H. Set tackle. Any fishing hook(s), devices, or lines that are not hand held or not attached to a fishing rod, reel, or pool under the immediate control of the user (excludes rod and pole holders and ice fishing tip-ups). In general terms, set tackle is any fishing tackle designed, rigged, floating or tied off for the purposes of catching fish while ''unattended'' by the fishing visitor (*e.g.,* trotlines, setlines).

I. Natural bait. Any natural live aquatic organism used to catch target fish.

3.7 When do we address the decision to allow fishing for proposed additions to the System? When lands or waters are under consideration for addition to the System, the Refuge Manager will make an interim compatibility determination on any existing priority public use. The record of decision establishing fishing on the refuge must document the completion of such determinations. The results of these determinations are to be in effect until the completion of a Comprehensive Conservation Plan (CCP). It is during the development of the CCP and implementation of National Environmental Policy Act (NEPA) that we accept public comments and incorporate them into the decision to allow fishing on the refuge. Refer to the Comprehensive Conservation Planning Process Chapter (602 FW 3) for detailed information on this process.

3.8 What are the procedures for opening System waters to fishing? The decision to open a refuge to fishing depends on the provisions of laws and regulations applicable to the specific refuge and a determination by the Refuge Manager that opening the area to fishing or harvest of other aquatic species will be compatible. This decision must also be consistent with the principles of sound fishery management, applicable fisheries objectives, and otherwise be in the public interest (see 50 Code of Federal Regulations (CFR) 32.4).

A. Specific conditions. The following conditions apply to fishing on certain units of the System:

(1) Waterfowl Production Areas (WPAs). WPAs are open to fishing subject to State law (50 CFR 32.4) as long as it is compatible. A rulemaking document is not necessary to open these areas to fishing since they are open unless closed. We may restrict WPA fishing programs by following the procedures established for refuges. Under 50 CFR 32.4, we may also temporarily close WPAs to fishing and other public use if circumstances warrant.

(2) Wetland easements. We have no authority over fishing on wetland easements, which we most often acquire as part of the Small Wetland Acquisition Program, unless we purchased specific rights with the easements. For these easements, the landowners has usually retained all rights to control public access, including access for fishing and other recreational uses.

(3) Easement refuges. The rights acquired with the individual easement refuge determine our control over fishing on easement refuges. The Regional Director is responsible for determining the extent of control over fishing on these areas. If we control fishing, the Refuge Manager must follow all procedures required to open a refuge to fishing.

(4) Farm Service Agency Easements (formerly Farmers Home Administration (FmHA)). We have no authority over fishing or other forms of public use on easements obtained through the various Farm Service Agency inventory property easement programs of 1985, 1990, and 1996. The landowner retains the right to control access for fishing and other recreational uses.

(5) National wildlife refuges in Alaska. The Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh–3233 and 43 U.S.C. 1602–1784) opens all national wildlife refuges in Alaska to fishing under applicable Federal and State law as long as it is compatible (50 CFR 36.32). A fishing plan or rulemaking document is not necessary to permit fishing on these refuges. We may prohibit or restrict the taking of fish only in conjunction with notices and hearings under the requirements of 50 CFR 36.42 regarding public participation and closure procedures. Local rural residents may fish and gather shellfish for subsistence uses in compliance with applicable Federal and State laws. Non-wasteful subsistence use of wildlife by local rural residents has priority over other consumptive uses permitted on national wildlife refuges in Alaska.

B. Evaluation criteria for fishing programs. We will use the following criteria and standards to evaluate fishing programs on units of the System:

(1) Compatibility. A fishing program must be compatible with the purpose(s) of the refuge and the System mission.

(2) Biological integrity, diversity, and environmental health. Fishing programs must maintain, or contribute to the maintenance of, viable populations of native species. We design our fishing programs to support accomplishing refuge purposes while maintaining or restoring biological integrity, diversity, and environmental health (see 601 FW 3). We will not establish fishing programs when there is a high potential to adversely affect a significant biological component of an existing native fish population, either by taking fish from that population or by introducing non-native species.

(3) Relationship with other public use programs. An integrated approach to providing opportunities for compatible wildlife-dependent recreational uses will minimize conflicts. The Refuge Manager will evaluate time and space scheduling and zoning as methods to ensure opportunities for a quality experiences among different user groups. In the case of conflicts between priority wildlife-dependent recreational

use, the Refuge Manager will make the final decision on which use to allow and which to curtail.

(4) Resources. Providing quality recreational experiences for the public requires appropriate funding, facilities, and staff. The House Report accompanying the House of Representatives version of the National Wildlife Refuge System Improvement Act of 1997 (H. Rpt. 105–106) encourages refuge managers to take reasonable steps to obtain outside assistance from States and other conservation interests, if adequate financial resources are not available to manage a priority use in a compatible manner. Refuge managers should work closely with State, community, and conservation partners to help obtain necessary resources to manage the priority wildlife-dependent recreational use programs. Potential sources of support include the following: angling organizations, user fees for hunting; cooperating with State, local, or Tribal agencies; and assistance from refuge support groups or volunteers. We encourage refuge managers to seek and implement other opportunities to obtain additional resources as they become available.

(5) Evaluation and monitoring. Refuge managers must monitor and evaluate their fishing programs regularly. Refuge managers must evaluate both the quality of the recreation experience and the effects of the activity on refuge resources. A wide variety of evaluation tools exist, from simply asking the fishing public how they rate their experience to contracting with a university or private company to conduct a formal survey. If a Refuge Manager decides to use a survey to evaluate the fishing experience, he or she must receive approval from the Office of Management and Budget before conducting any public surveys.

C. Consultation and coordination.

(1) Coordination with states and tribes. When a refuge, or portion thereof, is open to fishing, we generally allow fishing within the framework of applicable State and Tribal regulations. We consult with the State, Tribes, and other appropriate authorities during the development of fishing programs and whenever we plan significant changes. Refuge regulations must be consistent with State and Tribal regulations, to the extent practicable. The use of more restrictive regulations requires consultation with the State or Tribe. We must list regulations that are more restrictive than State or Tribal regulations, such as seasons and fishing hours as refuge-specific regulations in 50 CFR part 32. Refuge-specific regulations must not weaken existing State or Tribal laws and regulations. We must justify deviations from State or Tribal regulations in the refuge fishing plan or amendments to that plan. Refuge managers should discuss refuge-specific regulations with peer-level State or Tribal administrators.

(2) Endangered species consultation. Refuge managers will review all fishing programs annually to determine if they may affect, adversely or beneficially, threatened or endangered species and their habitats. The Refuge Manager will initiate consultation, as appropriate, under Section 7 of the Endangered Species Act and intra-Service consultation procedures, consistent with the ''Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fishing Opportunities,'' and Section 305 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Pub. L. 94–265) regarding effects on ''essential fish habitat.''

(3) Public involvement. The appropriate level of public involvement must accompany new or significant changes (*e.g.,* boundary change, change of species fished, bait restrictions) to existing fishing programs. We plan efforts well in advance of the proposed changes in order to obtain as much involvement from the public as possible. A variety of methods are available for the Refuge Manager to use to involve and inform the public, including public meetings, workshops, news releases, and mailings to targeted groups. We encourage refuge managers to continue to use these and other methods. We require an outreach plan for new fishing programs or any significant changes affecting existing programs. We develop these plans in coordination with Regional External Affairs Offices for new fishing programs or any major changes affecting existing programs.

D. Documentation required to open a refuge to fishing. The Refuge Manager must submit the following documents to the appropriate staff in the Regional Office. This individual then forwards a copy to the National Wildlife Refuge System Headquarters for preparation of a rulemaking document:

(1) Fishing plan. This plan should be a step-down plan of the refuge's CCP, which must include a compatibility determination on the fishing program. If the unit has not yet completed a CCP, the step-down fishing plan must contain a compatibility determination(s) until the CCP is completed. Cover fishing and shellfish harvest in separate compatibility determinations. The plan must provide overall documentation of the fishing allowed on a refuge, including the relationship of fishing to refuge purpose(s), goals, and objectives of the refuge and the System mission. We label a suggested format for a refuge fishing plan as Exhibit 1 in this chapter.

(2) Appropriate NEPA documentation.

(3) Appropriate decision documentation.

(4) Section 7 evaluation. (See Exhibit 2 for information on Section 7 evaluation.)

(5) Copies of letters requesting state, and where appropriate, tribal involvement and the results of the request.

(6) Draft news release.

(7) Outreach plan. (We label a Directorate-approved outline for an Outreach Plan as Exhibit 3).

3.9 Who prepares and reviews a refuge fishing plan? The Refuge Manager, with technical assistance as required from Service fisheries biologists, State wildlife agencies, and, where appropriate, Tribal governments, is responsible for preparation of the fishing plan. The Regional Director approves the plan before the rulemaking process begins. During the rulemaking process, Headquarter's staff reviews the fishing plan and supporting documents. The Refuge Manager will annually review the fishing plan on the refuge where we allow fishing.

3.10 *What information do we need for publication in the* **Federal Register**? The Refuge Manager will determine the compatibility of conducting a fishing program on the refuge and will document the results in an approved fishing plan. After the Refuge Manager determines that the proposal is compatible, he or she will submit information about whether a refuge will open for fishing and the conditions of that fishing proposal to the Federal Register Liaison at the Headquarters. We will use this information to develop the proposed and final refuge-specific regulations for publication in the **Federal Register** and for codification in 50 CFR.

3.11 *What is the refuge-specific regulation process?* The refuge-specific regulation process is outlined below:

A. The Headquarters must publish in the **Federal Register** any proposed and final refuge-specific regulations pertaining to a refuge's fishing program and that are necessary to conduct that program prior to them becoming effective. Forward all refuge-specific regulations and any changes to 50 CFR part 32 through appropriate channels to the Headquarter's Federal Register Liaison for clearance and submission to the **Federal Register**. The refuge is open

to fishing officially after the effective date of the final rule. Fishing can begin concurrently or after the opening of the season under the published regulations.

B. Refuge managers must review these regulations and the refuge fishing plan annually to ensure compatibility and consistency of the fishing program with existing laws and regulations. Regional Offices must submit any amendments (additions, deletions, or modifications) each year to their designated regional hunting and fishing program coordinators who, in turn, send that information to the Headquarter's Federal Register Liaison for inclusion in the rulemaking documents for publication in the **Federal Register**. The Headquarter's Federal Register Liaison must receive this information by January 31 each year to allow sufficient time for compilation and review by concerned program offices and the Solicitor, signature by the Assistant Secretary, and the Departmental review for both proposed and final rules. This includes a 30-day public comment period on the proposed rule. We cannot publish a refuge opening without the complete fishing package. If no amendments are necessary, refuge managers should submit a negative response to that effect to the Regional Office. Refuge-specific regulations should be standard and consistent in format throughout the System. We include guidelines for preparing and submitting regulations and amendments in Exhibit 4.

3.12 *How do we revise a fishing plan?* The Refuge Manager may approve all revisions in fishing plans except major revisions. Major revisions in fishing plans (*e.g.,* addition of new bodies of water or new species available for taking to a fishing program) can occur only as an amendment to the fishing plan unless the original plan included specific conditions under which the revision could occur. Preparation and approval of amendments follow the same guidelines as preparation and approval of the plan. Refuge managers will submit only the revised portion of the plan for approval to the Regional Office. The Regional Director approves revisions only if we have already listed the Refuge in 50 CFR as open to fishing. Otherwise, the Regional Office will submit the amended fishing plan to Headquarters to begin the rulemaking process described in section 3.11.

3.13 *What are the guidelines for refuge fishing programs?* We should plan, manage, conduct, and evaluate refuge fishing programs on a consistent basis in ways that protect habitat, fish and wildlife, ensure angler and visitor safety, and promote positive values such as high ethical standards and respect for the resource. Fishing on refuges must have the attributes of a quality fishing program listed in section 3.6. The following guidelines should help ensure that quality opportunities are available.

A. Permits. We require anglers to have all applicable Federal, Tribal, and State licenses, permits, or stamps in their possession. We can issue refuge permits to limit access, regulate methods, or gather information. If we use refuge permits to limit angler numbers, we will issue them on a random basis to the public. Refuge managers should avoid complicated application processes that require additional resources. Application processes should be flexible to provide an opportunity to all potential anglers. We should coordinate with Tribal and State application and lottery processes where practicable.

B. Fees. We can charge fees for applications, refuge permits, and the use of facilities (*e.g.,* boat ramps) under existing recreation fee programs. We use fees collected to enhance visitor facilities, to protect resources, and to educate visitors. The Regional Fee Coordinator can assist with the approval of fees.

C. Zoning recreational use. We desire a balanced fishing program that allows a variety of angling opportunities and contributes to the quality of a fishing experience. We can use zoning of boat types and motor horsepower to help achieve a balance of allowed uses and to reduce conflicts between anglers and other users. We can also use zoning to provide less competition for youth fishing events, anglers with disabilities, and those using non motorized boats and/or methods that reduce fish mortality, such as catch and release.

D. Law enforcement. Law enforcement is an important part of any fishing program. The effort invested should be sufficient to protect human safety, fish populations, and ensure compliance with regulations based on past experiences and current circumstances.

E. Angler access and vehicle vessel control. Refuge managers should carefully plan, manage, and evaluate angler access and vehicle/vessel control to retain quality opportunities. We should balance ''walk-in'' and remote fishing opportunities with easily accessible fishing opportunities. We can make exceptions to general access restrictions for anglers with disabilities when necessary to facilitate their experience and when compatible with resource management objectives.

F. Camping. We may allow camping on refuges when we have determined it to be a secondary compatible use that is necessary to support fishing opportunities. Camping is only appropriate when no reasonable (based on time, distance, and expense) lodging opportunities are available off-refuge and when staff resources needed to manage camping do not detract from the quality of another priority wildlife-dependent recreational use [refer to the Appropriate Uses Chapter (603 FW1) for information on non priority uses]. Large refuges in the western United States, refuges in Alaska, and some remote refuges allow camping under these criteria..

G. Fishing by service staff. Service employees are subject to the same rules and regulations as the general public. If only limited fishing opportunities exist, refuge managers should discuss with Service employees the need to be sensitive to the possibility of the public perception of conflict of interest. We never authorize Service employees to wear uniform components outside of their official capacity. When employees participate in off-duty fishing opportunities, they are not authorized and, therefore, should never wear uniform components (*e.g.,* uniform ball caps, uniform jeans). In addition, personnel may not use means of access to fish in areas that are not available to the general public. This policy does not apply to the collection of fish by refuge staff for the purpose of monitoring specific fish populations.

H. Communication materials. Professionally developed outreach materials will assist refuge managers by providing clear and thorough information to anglers. Brochures must conform to the U.S. Fish and Wildlife Graphics Standards and be consistent with refuge-specific regulations. Contact your Regional Publications Coordinator for graphic standards. Refuge managers do not need to include regulations and dates that are identical to State seasons. Include information that encourages anglers to fish safely and ethically, and use equipment that reduces injury to released fish (such as barbless hooks). If we develop informational signs, they will conform with the Service's Sign Manual.

I. Tournament fishing. We prohibit this type of fishing on System lands and waters unless we make a specific determination that the event builds appreciation for and an understanding of fish and wildlife resources, does not reasonably interfere with other refuge visitors, and if prizes of only nominal value are awarded. Refer to the Appropriate Uses Chapter (603 FW 1) for additional discussions of competitive events.

J. Special fishing areas. Our policy is to offer fishing opportunities to as broad a spectrum of the general public as possible. Generally, fishing programs should consider any legal means of fishing, as defined by the State and is determined to be appropriate and compatible and not inconsistent with System policy.

K. Nonnative bait. We will allow no live, nonnative bait (defined, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species) on System waters where we have jurisdiction. We will generally refer to the individual State's definition of native on System waters.

L. Natural bait methods. Throw nets, minnow traps, and other means/methods of taking natural bait will be done under State regulations unless we list more restrictive regulations in the refuge-specific regulations. We will limit bait collection on refuges to the recreational harvest of natural bait for personal use only; we will allow no commercial harvest of natural bait in waters under the jurisdiction of the System.

M. Limited harvest. We may offer special opportunities to a limited number of anglers in cases where there is a relatively small area of water to fish or we have a relatively low number of fish that are available for harvest.

N. Youth fishing. We encourage refuge managers to set aside areas or times to promote fishing by children or under represented groups. Experiencing the thrill of the catch and exposure to proper fishing methods through programs such as ''Pathways to Fishing'' and National Fishing Week is important to developing life skills and public support for healthy ecosystems. Refuge managers should take advantage of these opportunities to educate young anglers and their parents about the importance of fisheries management, the need for slot sizes, consumptive and non consumptive fishing opportunities and quality fishing experiences.

O. Barbless hooks. We encourage the use of these devices in our fishing program and recognize the importance of this method in reducing mortality of fish not intended for consumption (e.g. fish outside of the slot size range). As more anglers raise concern over the state of America's fisheries, refuge managers should take the lead in introducing methods that not only promote the experience but educate the angler. By promoting the use of barbless hooks in our brochures and other information sheets, we can, in some cases, avoid the need for increasing seasonal closures.

P. Data collection. Refuge managers should consult with the Service's Fisheries Program Specialist, States, Tribes, and other appropriate entities regarding data collection needs and survey methods.

Q. Nontoxic tackle. Refuge managers may restrict the use of specific types of tackle (e.g., lead fishing weights) in System waters to protect certain species (e.g., loons).

R. Unattended tackle. The use of trotlines, setlines, gillnets, giglines, jug lines, soap lines, snaglines and other unattended tackle, may be allowed if authorized by State fishing regulations. We prohibit the use of unattended tackle by commercial operators on System waters under our jurisdiction except when used as a management tool. We must strictly monitor the unattended tackle program and document the results. The only exception to this policy is found in the Alaska National Interest Lands Conservation Act (ANILCA) under subsistence uses. We do not consider tip-ups used for ice fishing unattended tackle for the purpose of this policy.

S. Ice fishing. We recognize ice fishing as an appropriate fishing opportunity. Refuge managers should encourage this activity where it is compatible and can be conducted in a safe manner. We prohibit the use of long-term structures or structures suitable for overnight occupancy.

T. Night fishing. We allow night fishing when it is appropriate and compatible with the purpose(s) of the refuge and the System's mission. If a refuge generally is not open after sunset, refuge managers may make an exception and permit night fishing. Refuge managers must base the decision on specific refuge objectives and not historical use. Refer to the General Guidance Chapter, 605 FW 1, for additional information about after-hours activities.

3.14 How do we close a refuge to fishing? The Refuge Manager may close all or any part of a refuge that we have opened to fishing whenever necessary to protect the resources of the area or in the event of an emergency endangering life, property, or any population of fish, wildlife, or plants.

A. Emergency closure. We do not require advance public notice for closure under emergency conditions. We notify the public of such closures by signs, special maps, or other appropriate methods.

B. Non-emergency closure. We evaluate non-emergency closure of a refuge fishing program for impacts on wildlife populations, ecosystems, and priority recreation uses. If the impacts are likely to be major or controversial, we prepare an environmental assessment and follow the public participation process identified in the National Environmental Policy Act (NEPA). In Alaska, we do not implement temporary closures (not exceeding 12 months) or restrictions relating to the taking of wildlife prior to the notice and hearing that we will conduct an emergency closure in the vicinity of the affected area(s).

Exhibit 1—Refuge Fishing Plan Format

I. Introduction

Include a general description of the refuge and information pertinent to the planned fishing program. If refuge managers develop this fishing plan as a portion of an integrated public use plan, we do not require this information. Include non repetitive general information in the Comprehensive Conservation Plan.

II. Conformance with Statutory Authorities

Explain how the program will be compatible with the System mission and the purpose(s) for which the refuge was established. Include projections of the resources (staff and funding) needed to conduct the program and their sources. Include an explanation of how the program will address the requirements of applicable authorities.

III. Statement of Objectives

List the major refuge objectives and the specific objectives of the fishing program. Describe how fishing will impact the refuge objectives.

IV. Assessment

Evaluate the fishing resources on the refuge populations and habitat. Points to be discussed include, but are not limited to, the following:

a. A biological evaluation.

b. Will populations sustain fishing and still support other wildlife-dependent priority uses?

c. Do fished species and other wildlife compete for habitat?

d. Do fished species prey on other species at unacceptable levels?

V. Description

Describe the program in detail using graphics as needed. The description should include:

a. Areas of the refuge that support fished species.

b. Areas of the refuge you intend to open to fishing.

c. Species for which you will allow fishing and fishing periods.

d. Justification of permit system, if required.

e. Consideration of user fees.

f. Consultation and coordination procedures with States and Tribes, including justification of refuge-specific regulations.

g. Methods of control and enforcement.

h. Consideration of providing opportunities for anglers with disabilities and youth anglers.

VI. Measures Taken to Avoid Conflicts With Other Management Objectives

a. *Biological conflicts.* Include Section 7 consultation, and other measures proposed to minimize or eliminate conflicts with endangered species or nontarget species.

b. *Social Conflicts.* Include proposed measures that minimize or eliminate conflicts with other user groups.

VII. Program Specifics

a. Refuge-specific regulations.
b. Outreach plan.
c. Angler application and registration procedures (if needed).
d. Description of angler selection process (if needed).
e. Draft news release regarding the fishing program.
f. Angler requirements.
(1) Age of angler.
(2) Allowable equipment.
(3) Licensing and permits.
(4) Reporting requirements.
(5) Angler training and safety.
(6) Other information (use of boats, motors, etc.).

VIII. Compatibility Determination

IX. Appropriate NEPA Documents

X. Evaluation

a. Monitoring and reporting use levels and trends.
b. Surveying needs of the fishing visitor.
c. Are we meeting program objectives?
d. Do we need to resolve any conflicts?
e. Refuge/Regional Office review schedule.

Exhibit 2—Priority Wildlife-Dependent Recreation (Fishing)

Use the following terminology for your section 7 determination as to whether the opening of your refuge to hunting and/or fishing will affect the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species within the System.

Types of Effects

1. *No effect:* The appropriate conclusion when the Service determines that a proposed Service action will not affect a listed species or designated critical habitat.

2. *Is not likely to adversely affect:* The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.

3. *Is likely to adversely affect:* The appropriate finding in a biological assessment (or conclusion during information consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed Service action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of ''is not likely to adversely affect''). In the event the overall effect of the proposed Service action is beneficial to the listed species but is also likely to cause some adverse effects, then the proposed Service action ''is likely to adversely affect'' the listed species. If incidental take is anticipated to occur as a result of the proposed action, an ''is likely to adversely affect'' determination should be made. Such a determination requires the initiation of formal intra-Service section 7 consultation (see definition of ''informal intra-Service consultation'').

4. *May affect:* The appropriate conclusion when a proposed action may pose *any* effects on listed species or designated critical habitat. When the Federal agency (in this case the Service) proposing the action determines that a ''may affect'' situation exists, then the Service must initiate formal consultation or seek written concurrence from the involved Service programs that the action ''is not likely to adversely affect'' listed species.

5. *Is likely to jeopardize proposed or candidate species/adversely modify proposed critical habitat:* The appropriate conclusion when the Service identifies situations where the proposed Service action is likely to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. If this conclusion is reached, intra-Service consultation is required.

Types of Consultation

1. Formal intra-service consultation: A process between a Service program taking/authorizing an action and another Service program affected by that action that: (1) determines whether a proposed Service action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with the Service program taking the action providing a written request and submittal of a complete initiation package to the affected Service program; and (3) concludes with the issuance of a biological opinion and incidental take statement by the affected Service program. If a proposed Service action may affect a listed species or designated critical habitat, formal intra-Service consultation is required (except when the involved Service programs concur, in writing, that a proposed action ''is not likely to adversely affect'' listed species or designated critical habitat). [50 CFR 402.02; 50 CFR 402.14]

2. Informal intra-service consultation: An optional process that includes all discussions and correspondence between Service programs, prior to formal intra-Service consultation, to determine whether a proposed Service action may affect listed species or critical habitat. This process allows the Service to utilize its in-house expertise to evaluate a Service program's assessment of potential effects or to suggest possible modifications to the proposed action that could avoid potentially adverse effects. If a proposed Service action may affect listed species or designated critical habitat, formal intra-Service consultation is required (except when the involved Service programs concur, in writing, that a proposed action ''is not likely to adversely affect'' listed species or designated critical habitat). [50 CFR 402.02; 50 CFR 402.13]

Exhibit 3—Outreach Plan Summary

I. Issue: (State the issue in one or two sentences.)
II. Basic Facts About the Issue:
III. Communication Goals:
IV. Message:
V. Interested Parties:
VI. Key Date:
VII. Strategy:

Exhibit 4—Guidelines for Preparation of Refuge-Specific Fishing Regulations

Fishing regulations on national wildlife refuges accomplish three major purpose(s): They protect the resource, manage it, and ensure safety. State fishing regulations generally provide the framework for meeting these three criteria. When State regulations fall short of meeting these criteria, refuge-specific regulations are necessary. These regulations should focus primarily on management of the wildlife (fisheries) resource and should be enforceable. For example, if we require permits on a specific refuge, a statement that we require special refuge permits is all that is necessary. Details are not appropriate in the regulations. Address details in a leaflet or the permit application. Also, do not submit text for your refuge unless it represents a CHANGE to the existing language in part 32. If you are adding conditions to those already published, state that these are ''adds'' and indicate where you want them inserted in the text.

Duplication of existing 50 CFR provisions. When writing your regulations, check 50 CFR to avoid duplication. For example, in Part 27, Prohibited Acts, Section 27.31 restricts motor vehicles to ''designated routes of travel. * * * delineated on maps by the Refuge Manager;'' Section 32.2(j) adequately covers possession of alcohol; and Section 27.95 prohibits setting fires.

Duplication of State regulations. 50 CFR 32.2 states ''(d) Each person shall comply with applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulation.'' Therefore, do not repeat State creel limits, seasons, etc., in the refuge-specific regulations. Refuge managers will justify why refuge-specific regulations deviate from State laws and regulations in a cover memo to the appropriate regional office representative.

Preparation of refuge-specific regulations. List tackle limits, creel limits, seasons, and hours that differ from the State's in the refuge-specific regulations. Please use the following examples for your submission for changes or additions to part 32:

For modifications to existing text in part 32:

Section 32.32 Illinois.

Chautauqua National Wildlife Refuge

D. Sport Fishing.

Replace condition D.1. with the following:

You may fish on Lake Chautauqua from January 15 through October 15. You may not fish in the Waterfowl Hunting Area during waterfowl hunting season.

Delete condition D.2.

Renumber conditions D.3., D.4., and D.5., to become D.2., D.3., and D.4., respectively.

To add a refuge that is opening for fishing for the first time:

Section 32.63 Texas

Lower Rio Grande Valley National Wildlife Refuge

D. Sport Fishing. We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. We only allow fishing at the three designated access sites on the Boca Chica Tract.

2. You must adhere to all applicable State fishing regulations.

Draft Wildlife Observation Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 4 Wildlife Observation 605 FW 4.1

4.1 *What is the purpose of this chapter?* This chapter provides the Fish and Wildlife Service's (Service) policy governing the management of recreational wildlife observation on units of the National Wildlife Refuge System (System).

4.2 *What programs does this chapter apply to?* The policies contained in this chapter apply to recreational wildlife observation within the System.

4.3 *What is our policy regarding wildlife observation on refuge lands?* The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. Wildlife observation is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will especially invest our resources in providing high quality wildlife observation experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide to the public wildlife observation opportunities. Our wildlife observation programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. We encourage refuge staff to coordinate refuge wildlife observation programs with applicable local, State, and Federal programs. We also encourage refuge staff to take advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

4.4 *What are the objectives of our wildlife observation program?* The objectives of the System wildlife observation program are to promote public understanding of and increase public appreciation for America's natural resources and the System by providing safe, enjoyable, attractive and accessible wildlife viewing opportunities and facilities.

4.5 *What authorities allow us to support wildlife observation activities on National Wildlife Refuge System lands?* Reference 605 FW 1 for laws that govern wildlife observation on System lands.

4.6 *What are the elements that constitute quality wildlife observation opportunities?* Essential elements of a quality wildlife observation experience include the following:

A. Observations occur in a primitive setting or use safe facilities and provide an opportunity to view wildlife and its habitat in a natural environment;

B. Observation facilities or programs maximize opportunities to view the spectrum of wildlife species and habitats of the refuge.

C. Observation opportunities, in conjunction with interpretive and educational opportunities, promote public understanding of and increase public appreciation for America's natural resources and the role of the System in managing and protecting these resources;

D. Viewing opportunities are tied to interpretive and educational messages related to stewardship and key resource issues;

E. Most facilities blend with the natural setting, station architectural style, and provide viewing opportunities for all visitors, including persons with disabilities;

F. Design of observation facilities minimize disturbance to wildlife while facilitating the visitor's views of the spectrum of species found on the refuge;

G. Observers understand and follow procedures that encourage the highest standards of ethical behavior;

H. Viewing opportunities exist for a broad spectrum of the public; and

I. Observers have minimal conflict with other priority wildlife-dependent recreational uses or refuge operations.

4.7 How do we address the quality of our wildlife observation programs when funding is an issue? Limited funding and staff may affect the quality of the wildlife observation experience that a refuge is able to offer the public. Refuge managers must scrutinize the impacts that lack of resources will have on the ability to provide quality wildlife observation opportunities to the public. It is appropriate to concentrate resources on fewer, high quality opportunities or seek partnerships to provide opportunities rather than offer many wildlife viewing opportunities that lack quality. When a refuge accepts funding to improve wildlife observation opportunities from partnership organizations, the Refuge Manager must ensure that the opportunity is provided in the most appropriate location.

4.8 How do we foster public stewardship in our wildlife observation programs? Refuge managers provide opportunities for the public to observe wildlife in order to instill in them an appreciation for the value of and need for fish and wildlife habitat conservation. Refuges provide enhanced opportunities to view wildlife in their natural habitat by identifying viewing areas, providing platforms, viewing equipment, providing brochures and interpreters, and designing tour routes. Refuge managers should seek to develop partnerships with organizations that promote wildlife observation and take steps toward conserving such resources. We encourage Refuge managers to design local ''hands-on'' activities that inspire participants to become involved in habitat restoration and other outreach programs. These opportunities foster a sense of stewardship for the System, wildlife, and habitat resources through direct association.

4.9 Is there a special need to provide safety and accessibility within our wildlife observation programs? Key issues for providing a quality wildlife observation program include accessibility and public safety. They are two of our highest priorities when evaluating our programs.

A. The Refuge Manager will ensure wildlife observation opportunities are accessible to a broad spectrum of visitors. Refuge managers must locate and design wildlife observation facilities to meet the needs of visitors with different abilities. The wildlife observation program fulfills accessibility standards and requirements by adhering to the Architectural Barriers Act of 1968 (42 U.S.C. 51, Sec. 4151), the 1984 Uniform Federal Accessibility Standards (UFAS), and the Americans with Disabilities Act of 1990 (42 U.S.C. 126). These acts specify physical accessibility in all construction and renovation projects funded wholly or in part by the Federal government. Also, the Rehabilitation Act Amendments of 1998, (29 U.S.C.

791 et seq.), require accessibility for all programs receiving Federal funds.

B. Visitor safety at refuges is a high priority. The Refuge Manager will construct pullouts and overlooks to reduce vehicular hazards. The Refuge Manager will provide visitors information regarding specific hazards and animal behavior if there is a concern about visitor safety. We may also use environmental education and interpretive programs to alert visitors about safety issues.

4.10 How should we address visitor conflicts? Wildlife observation opportunities must be compatible with the purpose(s) of the refuge and the System mission. Increased visitation to refuges, in many cases, will cause user conflicts and may create unavoidable wildlife disturbances. The Refuge Manager may impose use limits or establish zones of use to reduce conflicts. The Refuge Manager determines which uses to allow when conflicts exist between priority recreation uses.

4.11 What are some examples of tools we can use to support our wildlife observation program? The following are examples of tools that we can use to support wildlife observation. The Refuge Manager should consider these as guidelines and continually use creativity and ingenuity when providing opportunities that highlight the uniqueness of a particular refuge.

A. Information. Information distribution is an invaluable management tool as well as a means to promote wildlife observation opportunities. Information, distributed through various media, should communicate what wildlife observation opportunities are available, best viewing times, techniques that emphasize respect for wildlife through the minimization of visitor impacts on wildlife, access point information, viewer etiquette, regulations, restrictions, management concerns, and management objectives. Examples of ways to provide information include bird/plant/mammal check lists, brochures, maps, books, watchable wildlife recreation symbols to help identify wildlife viewing opportunities, wildlife viewing guides, movies, slide shows, talks, guided walks, staffed information desks, roving interpreters, formal environmental education classes, teacher workshops, and interpretive exhibits. Distributing information is a way to direct public use to appropriate areas, provide managers with the opportunity to present the refuge, System, and Service messages to visitors, and foster public appreciation and stewardship.

B. Developed observation sites. Developing specific areas for visitors to view wildlife enhances wildlife observation and limits disturbances of wildlife and habitat. During the planning process, Refuge managers must consider constructing viewing areas at sites that are less sensitive to the impacts of visitors. Refuge managers may consider hardening sites (e.g., adding gravel, asphalt, wood chips, etc.) as a method of reducing impacts. Developed observation sites provide a centralized area for visitors to receive information and education needed to produce a safe, high quality experience. Examples of such developments include trails, boardwalks in wet areas, observation platforms, blinds, vehicle pullouts, information kiosks, identification signs, and automobile tour routes. When modifications to facilities to increase accessibility for people with disabilities will deleteriously impact the setting's appearance, environmental features or historic character, we will make efforts to permit people with disabilities alternative access to the activity.

C. Specialized tools. In cases where direct wildlife viewing would be detrimental to sensitive species or habitats, Refuge managers may develop methods that provide remote viewing opportunities. Spotting scopes provide viewing opportunities from a distance. Remote cameras allow for viewing during especially sensitive periods such as nesting. Pictures from remote cameras link with the System's electronic field trip programs and long-distance environmental learning projects. Videos shown in the visitor center highlight wildlife and the purpose of the refuge. The videos aid those who visit the refuge outside of the optimum viewing season. Photographs incorporated into interpretive signs show visitors wildlife and habitats they may encounter. We should consider specialized tools as supplements to and not replacements for direct viewing opportunities. Consider using these tools to provide opportunities that might otherwise be unavailable.

D. Habitat enhancements. There may be situations where it is not feasible for viewers to get to an area for viewing because of cost, remoteness, accessibility problems, safety concerns or sensitivity to disturbance. In such cases, simple enhancement techniques in suitable and more accessible locations may be a solution. Examples of these techniques include creating a pond or wetland environment or creating bird habitat by planting cover vegetation in places where wildlife viewing is more accessible. Refuge managers must adhere to appropriate National Environmental Policy Act procedures before artificially creating habitat. Refuge managers must weigh both the benefits of enhancements to wildlife viewing against the change or elimination of the existing habitat and the potential harm the enhancement activity may have on wildlife.

E. Partners. Partnerships with other Federal and State agencies, Tribes, organizations, industry, local communities and others produce significant contributions to our wildlife observation programs. Refuge managers should contact potential cooperators and demonstrate the advantages associated with being a refuge supporter. Partnerships can develop through the sharing of expertise, personnel, materials, or money, and includes the ''sharing'' of wildlife and habitat. Wildlife does not observe property lines or agency boundaries. Sharing viewing areas may reduce human pressure from one spot or eliminate uses from sensitive spots by providing them off-site on shared areas. Partnering is an excellent way of fostering a sense of ownership and stewardship of natural resources among a variety of groups.

F. Evaluations. Refuge managers must monitor and evaluate their wildlife observation programs regularly. Refuge managers should evaluate both the quality of the resource experience and the effects of the activity on refuge resources. A wide variety of evaluation tools exist, from simply asking visitors how they rate their viewing experience to contracting with a university or private company to conduct a formal survey. If a Refuge Manager decides to use a survey to evaluate the visitor's wildlife experience, he or she must receive approval from the Office of Management and Budget (OMB) before conducting any public surveys (use of an existing Fish and Wildlife Service OMB-approved customer service evaluation card does not require additional OMB approval). We should have the refuge wildlife observation program reviewed by others to determine the quality of the program, if the program is meeting the specific objectives, and if it is meeting the needs of visitors.

4.12 Can we close a refuge to wildlife observation? The Refuge Manager may close all or any part of a refuge that is open to the public whenever it is necessary to protect resources of the area, to prevent potential emergency situations, or in the event of an actual emergency endangering life or property (*i.e.,* severe weather conditions). These closures do not require advance public

notice to be implemented. We notify the public of such closures by signs, special maps, or other appropriate methods. When considering possible long-term closures, Refuge managers must follow procedures for public involvement as identified in the National Environmental Policy Act (NEPA).

Draft Wildlife Photography Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 5 Wildlife Photography 605 FW 5.1

5.1 What is the purpose of this chapter? This chapter provides Service policy governing the management of recreational wildlife photography on units of the National Wildlife Refuge System.

5.2 What programs does this chapter apply to? The policies contained in this chapter apply to recreational wildlife photography within the System. Reference the guide chapter (604 FW 7) for policies and procedures related to activities such as professional guide services. Reference the Audio Visual Productions chapter (604 FW 10) for policies and procedures related to activities associated with commercial filming and news photography.

5.3 What is our policy regarding wildlife photography on refuge lands? The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. Wildlife photography is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will especially invest our resources in providing high quality wildlife photography experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide to the public wildlife photography opportunities. Our wildlife photography programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. We encourage refuge staff to coordinate refuge wildlife photography programs with applicable local, State, and Federal programs. We also encourage refuge staff to take advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

5.4 What are the objectives of our wildlife photography program? The objectives of the System wildlife photography program are to promote public understanding and increase public appreciation for America's natural resources by providing safe, attractive and accessible wildlife photography opportunities and facilities.

5.5 What authorities allow us to support wildlife photography opportunities on National Wildlife Refuge System lands? Reference 605 FW 1 for laws that govern wildlife photography on System lands.

5.6 Have we defined common photographic terms? Yes. The following are definitions of terms used in reference to wildlife photography.

A. Film. Film is still photographs, motion pictures, and videotapes in digital and analog formats.

B. Recreational photography. Recreational photography is any type of visual recording on film performed by amateur owner/operators of photographic equipment. Casual photography is considered recreational photography and follows this policy (*e.g.,* visitors taking photographs for their own use, non-commercial recreational photo contests).

C. News photography. News photography includes audio-visual productions for news and public affairs, stills, motion-pictures, video, records and audio tapes, such as those produced for television, newspapers, and magazines. News photography on System lands is for the benefit of the general public. Examples of news events are emergencies, special events, or appearances by public figures or other unusual, non-recurring natural phenomenon. News photography will not require a permit but some restrictions may be placed on the activity by the Refuge Manager to protect the resource and/or the individuals associated with the media. Refer to the audio-visual chapter for additional information on this subject (604 FW 10).

D. Commercial photography. Commercial photography is visual recordings by firms or individuals (other than news media representatives) who intend to distribute their photographic content for money or other consideration. We include the creation of educational, entertainment, or commercial enterprises in this category. We also include advertising audio-visuals for the purpose of paid product or services, publicity and commercially-oriented photo contests under this section. We cover commercial photography permit requirements under the audio-visual chapter of this manual (604 FW 10).

5.7 Have we defined a quality wildlife photography opportunity? Yes. The following are essential elements of a quality photographic opportunity and facility.

A. Photographic opportunities occur in or use safe facilities;

B. Photographic opportunities promote public understanding and increases public appreciation of America's natural resources and our role in managing and protecting these resources;

C. Photographic opportunities occur in places that have the least amount of disturbance to wildlife;

D. Photographers understand and follow procedures that encourage the highest standards of ethical behavior;

E. Opportunities are available to a broad spectrum of the photographing public;

F. Facilities, if provided, are fully accessible, reflect positively on us and blend with the natural setting;

G. Photographic opportunities incorporate a message of stewardship and conservation;

H. Photographic opportunities create minimal conflicts with other priority wildlife-dependent recreational uses or refuge operations.

5.8 How do we address the quality of our wildlife photography programs when funding is an issue? Limited funding and staff may affect the quality of the experience. Managers must scrutinize the impacts of lack of resources on quality. It is appropriate to concentrate resources on fewer, high quality opportunities or seek partnerships to provide opportunities rather than offer photographic experiences that are lower in quality.

5.9 How do we address public stewardship in our wildlife photography programs? We provide opportunities to the public in order to develop an appreciation for the value of, and need for, fish, plant and wildlife conservation. These opportunities should also foster a sense of stewardship for the System and its wildlife and habitat resources through direct association.

5.10 Is there a special need to provide safety and accessibility within our wildlife photography programs? Not only are public safety and accessibility key to a quality wildlife photography program, they must be two of our highest priorities when evaluating our programs. We construct pullouts and overlooks to reduce vehicular hazards to photographers. We give our visitors

information regarding specific hazards and animal behavior if we have a concern about visitor safety. Environmental education and interpretive programs may also be used to bring safety concerns to the attention of photographers. We will make every effort to ensure wildlife photographic opportunities are accessible to a broad spectrum of visitors.

5.11 How should we address user conflicts? Wildlife photography opportunities must be compatible with the purpose of the refuge and the System mission. Increased visitation to refuges will cause user conflicts and may create unavoidable wildlife disturbances. Refuge managers may impose use limits or establish zones of use to reduce conflicts. As an example, casual wildlife observers may disturb photographers at a specific site that provides the best opportunity on the refuge to observe bald eagles. The Refuge Manager may work out a partnership with the State to provide a roadside viewing point just off the refuge along the highway for general observation. The Refuge Manager may then decide to limit the area within the refuge to photographers or those wanting to use photography blinds.

5.12 Can we close a refuge to photography? As long as a refuge is open to the public, we cannot close it specifically to photography. The Refuge Manager may close all or any part of a refuge that is open to the public whenever it is necessary to protect resources of the area or in the event of an emergency endangering life or property (*i.e.,* severe weather conditions). We do not require advance public notice for closure under emergency conditions. The public is notified of such closures by signs, special maps, or other appropriate methods. When considering possible long term closures, refuge managers must follow procedures for public involvement as identified in the National Environmental Policy Act (NEPA).

Draft Environmental Education Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 6 Environmental Education 605 FW 6

6.1 What is the purpose of this chapter? This chapter identifies Service policy and guidance governing environmental education (EE) as a priority wildlife-dependent use of the National Wildlife Refuge System.

6.2 What is the scope of this chapter? This chapter applies to Refuge System environmental education programs and services. Along with this policy guidance, we will use other documents including but not limited to *Connecting People to Wildlife, Environmental Education in the National Wildlife Refuge System,* an environmental education guidance document for the Refuge System (Appendix 1).

6.3 What is our policy for environmental education? The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. Environmental education is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will especially invest our resources in providing high quality environmental education experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide to the public environmental education opportunities. Our environmental education programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. We will work with local schools, citizen groups, and other organizations to provide programs and assistance that promote awareness, appreciation, and understanding of the role the System plays in the conservation of fish, wildlife, plants, and cultural and historical resources. We encourage refuge managers to coordinate refuge environmental education programs with applicable local, State and Federal programs. We also encourage refuge staff to take advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

6.4 What are our objectives for environmental education programs on refuges? Our environmental education programs:

A. Will provide appropriate materials, equipment, facilities, and study locations to support environmental education, where compatible;

B. Will allow program participants to demonstrate learning through refuge-specific stewardship tasks as well as projects that they can carry over into their everyday lives;

C. Will establish partnerships to support environmental education on refuges open to the public;

D. Will incorporate local, State, and national educational standards in our programs with an emphasis on wildlife conservation;

E. Will assist refuge staff and volunteers to attain the knowledge, skills, and abilities to support environmental education at the minimum or higher levels as defined in Section 6.7C(1) below;

F. Will teach awareness, understanding and appreciation of our trust resources: and

G. Will serve as a means by which refuge employees are seen as role models for environmental stewardship through a continually developing positive relationship with the community.

6.5 What is our legislative authority for environmental education? Reference 605 FW 1 for laws that govern environmental education on Refuge System lands.

6.6 What are some of the terms we use in this chapter? The following are definitions of terms used in this chapter.

A. Environmental education (EE). Activities that use a planned process to build knowledge, skills and abilities in students and others, about wildlife-related environmental topics. EE often follows sequential learning strategies to promote specific learning outcomes.

B. Educational assistance. Either on- or off-site, making EE expertise from Service staff available to schools and teachers, Service entities, government agencies, private groups, and individuals.

C. Outdoor classrooms. Sites of structured EE activities that:

(1) Focus on the natural environment;

(2) Come from an approved course of study with identified learner outcomes; and

(3) Are hands on, involving Refuge System lands.

6.7 *How will we develop and implement this chapter?* In this chapter we present guidance for planning, implementing, and evaluating EE programs within the Refuge System. Connecting People to Wildlife, the EE guidance document for the Refuge System, curriculum guides, and other documents created for regions or at refuges contain additional guidance.

A. Program support. The Office of the Chief, National Wildlife Refuge System, is responsible for overall guidance, implementation, and management of EE within the Refuge System. Regional Directors designate EE coordinators to assist refuges with education programs and products. The National

Conservation Training Center (NCTC) offers several EE training courses and model programs as well as program support for our EE programs. Refuge managers plan, develop, and implement EE programs that increase public knowledge, understanding and support for refuge resources.

B. Program planning. Each field station designs its EE objectives and strategies when they develop their Comprehensive Conservation Plan (CCP) or step-down visitor services plan. Managers and staff analyze their EE program potential and determine their educational objectives and develop an interim program if they are not scheduled to develop a CCP within 2 years. In either of these planning processes, refuge staff :

(1) Determine if current or proposed educational sites, programs, and activities are compatible with the Refuge System mission, the purpose(s) of the refuge, and the goals and objectives established for the refuge;

(2) Identify staffing, funding, and other requirements for an EE program, enhancing our EE offerings by working with volunteers and through partnerships with educators;

(3) Identify ecosystem characteristics, endangered species, cultural resources, wilderness, and fish, wildlife, plants, cultural and historical resources that are key resource issues for each field station. Working with educators, we use this assessment to identify target audiences and look for creative ways to tie resource priorities to local educational needs and curricula;

(4) Collect and consistently update data identifying teachers, community resources, transportation constraints, and history of use by educational groups;

(5) Identify current or potential outdoor classroom facilities; and

(6) Identify educational needs and educational outreach opportunities for our staff, volunteers and partners, particularly activities involving nontraditional audiences.

C. Program development and priorities. Field stations establish educational program priorities based on their objectives and mandates, as well as local, State and national priorities. As part of our planning we evaluate educational programs and offer differing levels of EE based in part on the number of staff with public use duties as well as other available resources. Other factors that determine our level of involvement include demand for educational programs, the number of schools near a refuge, and their willingness to participate. We can place our environmental education programs in one of four levels of service. Each field station will use components of one, or a combination of these levels, to design their educational programs to meet local needs, and where possible will strive to include components from the next higher level.

(1) Refuges that have staffs of less than 5 FTEs, and do not have any positions solely dedicated to public use activities. At the minimum level, field station EE programs include:

(a) Creating or providing a lending library of materials and resources for teachers and other educators;

(b) Designating a trained staff contact person for EE;

(c) Designating a study site and providing stewardship opportunities;

(d) Helping local educators identify refuge resources and develop programs;

(e) Forming partnerships or recruiting and training volunteers including senior citizens and/or people with disabilities to conduct EE activities.

(2) Refuges that have staffs of approximately 5–9 FTEs, do not have any positions solely dedicated to public use, and have a Refuge Manager position at the GS 11–12 level. At the standard level, we encourage field stations to:

(a) Conduct and/or host teacher training workshops;

(b) Provide educators with refuge-specific curriculum, activities and lesson plans;

(c) Develop accessible outdoor classrooms;

(d) Establish formal partnerships with school districts and/or community groups to assist with development and implementation of refuge EE programming;

(e) Recruit and train volunteers to assist in developing and presenting EE programming;

(f) Conduct regular EE program evaluation;

(g) Provide opportunities to contribute to refuge management goals through learning and stewardship activities;

(h) Establish a lending library of educational materials, including but not limited to book, trunk, and multimedia resources;

(i) Conduct some on-site and occasional off-site EE programming; and

(j) Employ key staff who have acquired the skills to develop and conduct EE activities.

(3) Refuges that have staffs of approximately 10–14 FTEs with 1 position solely dedicated to public use, and have a Refuge Manager at the GS 12–13 level. At the enhanced level, we encourage field station EE programs to:

(a) Develop a multi-disciplinary EE program with integrated curricula meeting national and State educational standards;

(b) Adapt the refuge's program to increase participant learning and connect environmental health with quality of life;

(c) Develop multiple facilities or study sites, with materials and equipment, that support refuge goals and objectives;

(d) Seek to hire professionally trained refuge EE staff;

(e) Conduct refuge-specific workshops; special events; symposia, including day camps, after-school, and off-site programs; elder hostels; and extended learning opportunities;

(f) Provide EE training and mentoring opportunities for educators, Service staff, and others;

(g) Have an EE program that demonstrates student learning through measurable objectives;

(h) Create an extensive EE outreach program for reaching participants outside the local area;

(i) Allow our EE staff to continue to develop professionally by attending training;

(j) Use technology to interface with off-site participants through the Internet, distance learning and websites; and

(k) Establish partnerships beyond local communities.

(4) Refuges that have staffs of approximately 15 FTEs or more with 1 or more positions solely dedicated to public use, have a visitor center, and have a Refuge Manager at the GS 13–14 level. The ''flagship'' level applies to stations with EE as part of their purpose(s). Other stations with an enhanced EE program can operate at this level. In addition to items at the enhanced level, we encourage refuges at the flagship level to:

(a) Develop and pilot new programs with broad applications across the Refuge System;

(b) Host local, State or national events/projects such as State duck stamp contests;

(c) Serve as a development site for entry level employees, detailees, and Student Career Experience Program participants;

(d) Become a community or State leader in EE;

(e) Have staff present papers at national conferences;

(f) Have staff serve as mentors or instructors for EE courses and course development;

(g) Perform peer review of other stations' EE program;

(h) Have year-round facilities that support all aspects of the EE program;

(i) Become centers for distance learning;

(j) Develop interactive curricula on refuge/Service websites;

(k) Develop multi-cultural programs as needed; and

(l) Develop outreach and partnerships that have regional focus.

D. Refuge-specific guidelines for developing EE programs: We advance and support the National Wildlife Refuge System mission and goals by developing programs based on the following guidelines. EE programs in the Refuge System strive to:

(1) Connect people's lives to the health of the environment;

(2) Advance science literacy through an interdisciplinary educational approach;

(3) Strengthen the Refuge System through science learning;

(4) Help participants experience the wonder of fish, wildlife, plants, cultural and historical resources;

(5) Stress the role and importance of refuges and emphasize the relationship between wildlife and associated ecosystems;

(6) Be outcome-based, going beyond attending a program to resulting in something of value for both refuge resources and participants;

(7) Pursue outreach and partnership opportunities enhancing programs on and off refuges and expanding our levels of educational expertise and staffing;

(8) Include lesson plans and refuge activity guides that incorporate, complement and focus on local school curricula allowing participants to utilize refuges as living laboratories;

(9) Train educators, volunteers, and partners in resource issues in order to multiply our efforts across a broader spectrum of students;

(10) Establish, maintain, and promote environmental study sites and outdoor classrooms where they are compatible with refuge purpose(s), goals, and objectives;

(11) Involve under-served populations like urban or rural schools, Native Americans, non-English speaking populations, senior citizens, people with disabilities, and groups in the educational community other than K–12 such as colleges and universities;

(12) Expand our capability through technology such as web pages and electronic field trips; and

(13) Use appropriate formats for visitors with disabilities (learning, visual, hearing).

6.8 How do we evaluate EE programs? We evaluate environmental education programs in the following manner:

A. Refuge staff should annually evaluate the program and make necessary changes to strengthen it.

B. As part of our Refuge Management Information System (RMIS), each year we report the number of people taking part in four educational categories: teachers participating in workshops, students taught on-site by staff or volunteers, students taught off-site by staff or volunteers, and non-staff conducted EE. These statistics provide some information about program activity, and we can use the data to identify trends and give an indication of program involvement.

C. Regardless of the level of EE program involvement, we should develop evaluation tools to measure program effectiveness. One simple tool is a comment form given to the leader after an educational field trip. Another way may be to measure the instances of littering, vandalism, or poaching, or compliance with refuge regulations. Refuge staff may consider implementing more detailed evaluation tools to measure learning outcomes and concept retention. Regional or Washington Office staff can assist with developing and analyzing the results of these evaluation tools.

Draft Interpretation Policy

Fish and Wildlife Service

Priority Wildlife-Dependent Recreation

Part 605 Fish and Wildlife Service Manual

Chapter 7 Interpretation 605 FW 7

7.1 What is the purpose of this chapter? This chapter identifies Service policy and guidance governing interpretation as a priority wildlife-dependent use of the National Wildlife Refuge System.

7.2 What is the role of interpretation? As one of the six priority wildlife-dependent uses of the Refuge System, interpretation connects people (visitors) to resources providing opportunities for them to develop an understanding and appreciation for natural and cultural resources. Visitors will receive messages about Refuge System resources through a variety of media including interpretive trails and boardwalks, wildlife centers, talks and walks, audio-visual productions, publications, and exhibits that communicate to a wide spectrum of visitors.

7.3 What is our policy for interpretation? The overarching goal of our priority public use policies is to enhance opportunities and access to high quality visitor experiences on national wildlife refuges while not compromising wildlife conservation. Interpretation is a legitimate and appropriate public use of the System, and along with the five other priority public uses in the Refuge Improvement Act, will receive enhanced consideration over other uses. This means we will especially invest our resources in providing high quality interpretation experiences for refuge visitors. When determined to be compatible, refuge managers are strongly encouraged to provide to the public interpretation opportunities. Our interpretation programs will promote understanding and appreciation of natural and cultural resources and their management on all lands included in the System. We encourage refuge staff to coordinate refuge interpretive programs and materials with applicable local, State, and Federal programs. We also encourage refuge staff to take advantage of opportunities to work with other partners who have an interest in helping us promote high quality wildlife-dependent recreational programs on refuges.

7.4 What are our objectives for interpretive programs on refuges? We will develop and maintain interpretive programs on refuges to:

A. Increase public understanding and support for the Refuge System;

B. Develop a sense of stewardship leading to actions and attitudes that reflect concern and respect for wildlife resources, cultural resources, and the environment;

C. Provide an understanding of the management of our natural and cultural resources.

D. Provide safe, enjoyable, accessible, meaningful, and high quality experiences for visitors increasing their awareness, understanding, and appreciation of fish, wildlife, plants, and their habitats.

7.5 What is our legislative authority for interpretation? Reference 605 FW 1 for laws that govern interpretation on Refuge System lands.

7.6 Do we have common definitions for interpretive terms? Yes. The following are definitions of terms used in reference to interpretation.

A. Interpretive plans. Interpretive plans are documents (see Exhibit 1) outlining key resources, visitor profiles, facilities, budget needs, and development plans as part of a refuge Comprehensive Conservation Plan or visitor services plan. The documents include interpretive objectives, themes, and activities presented at a refuge.

B. Interpretive objectives. Desired, measurable outcomes of an interpretive activity.

C. Interpretive themes. Central messages we strive to communicate. All interpretive activities should have messages relating back to overall field station interpretive subjects or topics as well as Service and/or Refuge System themes.

D. Interpretive activities/tools. The ways we convey interpretive messages to visitors, on-site or off-site, such as, but not limited to, tours, talks, slide presentations, brochures, self-guided trails, audio tapes, videos, and exhibits.

7.7 What are some standards and requirements for interpretive programs? When we develop interpretive programs, we will utilize the following:

A. Principles of interpretation. Our interpretive activities will utilize the principles included in published materials describing the art of interpretation such as Freeman Tilden's ''Interpreting Our Heritage'' or others. We link the resources of the Refuge System with the concepts and values visitors bring to our sites. Specifically, we strive to:

(1) Relate what we display or describe to each visitor's expectations and experience;

(2) Motivate and reveal;

(3) Inspire and develop curiosity, not solely instruct;

(4) Relate enough of the story to introduce concepts and ideas, pique visitor's interest, allow visitors to develop their own conclusions; and

(5) Organize activities around central themes with measurable objectives.

B. Interpretation as a management tool. Well-designed interpretive services can be our most effective and inexpensive resource management tool. For many visitors, taking part in one or more interpretive activities is their primary contact with refuge staff, their chance to find out about refuge messages, and could be their first contact with the refuge, conservation, and wildlife. Through these contacts, we have the opportunity to influence visitor's attitudes toward the Service and their behaviors when visiting units of the Refuge System. Interpretive planning and subsequent activities and products can:

(1) Help visitors understand the impacts of their actions, minimizing unintentional resource damage and wildlife disturbance;

(2) Communicate rules and regulations so they relate to visitors, solving or preventing potential management problems; and

(3) Help us make management decisions and build public support by providing insight into management practices.

C. Assuring highest levels of quality: We carefully consider personnel, locations, and types of programs and products in order to provide high quality interpretive services.

(1) Staff conducting interpretive services must have more than subject matter knowledge. For example, the skill required to write text for interpretive exhibits and brochures differs from technical writing skills. We strive to select dynamic people who enjoy interacting with visitors, demonstrate organizational and communications skills, and act professionally.

(2) Often, sensitive habitats are the most attractive places to visit and best places to interpret. To minimize impacts on sensitive habitats we: use staff and/or trained volunteers to lead activities; limit group size; select certain times of day for programs; design facilities and activities to minimize disturbance to wildlife and habitats; and close areas seasonally. Visitors can experience sensitive resource areas with minimal impact by using boardwalks, viewing blinds, remote camera views, exhibits, and telescopes. Other techniques may be the use of dioramas, interactive displays, and digital (*i.e.,* CD–ROM) interpretive methods. We can also separate areas devoted to wildlife observation and education from other programs such as fishing and hunting to preserve a high quality experience for all visitors.

(3) While refuge staff should try to reach as many individuals and interest groups as possible with our message, quantity is not the only measure of success. Program quality and effectiveness is crucial. Refuge managers strive for a balanced program with a variety of experiences for visitors with different levels of time, ability, and, interest. Refuge staff periodically review and evaluate programs to assess effectiveness.

D. Making interpretation accessible: We will meet accessibility standards and requirements by adhering to the Architectural Barriers Act of 1968 (42 U.S.C. 51, Sec. 4151), the 1984 Uniform Federal Accessibility Standards (UFAS), and the Americans with Disabilities Act of 1990 (42 U.S.C. 126). These acts specify physical accessibility in all construction and renovation projects funded wholly or in part by the Federal government. Also, the Rehabilitation Act Amendments of 1998, (29 U.S.C. 791 *et seq.*), require accessibility for all programs receiving Federal funds. Meeting accessibility requirements presents the challenge and opportunity to provide better interpretive activities for everyone. Creating media, facilities and programs that are more easily read and understood, paths that are level or have ramps and handrails, and exhibits that provide audio or tactile elements benefits everyone and provides multiple paths to learning.

7.8 Why should we do interpretive planning? We are involved in interpretive planning for the following reasons:

A. Interpretive plans help focus staff time, funding, and other resources on our primary interpretive messages and give focus and direction to exhibits, programs, and other interpretive activities. This planning can also help set field station and funding priorities and help locate sources of alternative funding. We can use elements from Comprehensive Conservation Plans, step-down management plans, and visitor service plans to develop a refuge interpretive plan.

B. When we develop interpretive plans, they become the basis for the development of future programs and services. New activities should always relate to and support the themes developed in the refuge interpretive plan. Exhibit 1 contains a general outline for interpretive plans.

7.9 What delivery methods do we use for interpretive activities? There are two broad categories of interpretive activities: self-guided and personal services. Self-guided interpretation includes brochures, exhibits, kiosks, audio-visual media (including computer programs), and self-guided trails. Personal services interpretation includes information desk duty, group presentations, guided talks and tours, and special events. We provide a variety of interpretive experiences that appeal to a broad spectrum of interests and learning styles. We strive for:

(1) High quality, self-guided services, since they reach a larger audience, are more readily available, and visitors can use them at their own pace;

(2) High quality personal contact to initiate conversation and answer questions; and

(3) A variety of interpretive experiences that appeal to varying visitor interests.

7.10 How should we produce interpretive media? The following are interpretive media available to us:

A. Self-guided products will maintain the highest level of quality and be designed as to be appropriate for the site and audience. Regional Public Use Coordinators can assist with planning, design, and contracting for production of self-guided products. Final approval for text and design of self-guided products comes from the Regional Offices.

B. We will design our brochures and publications following the ''U.S. Fish and Wildlife Manual of Graphic Standards for Publications.'' The Government Printing Office (GPO) processes all of our printing and duplication. Regional Printing Coordinators must approve requests to

use a commercial source other than GPO.

7.11 How do we evaluate our interpretive program? We evaluate our programs to assure that we are providing the highest level of service. By periodically reviewing programs, we determine program needs, initiate changes, and decide if we are meeting our goals and objectives. Some sources for evaluation methods are interpretation textbooks, other agencies or organizations, and professional associations like the National Association for Interpretation.

A. Performance evaluation. We evaluate individuals and services to improve delivery methods, messages, and the interpretive approach for future activities. Remember that surveys must follow OMB requirements and restrictions. Some methods used include:

(1) Supervisory feedback;

(2) Peer evaluation;

(3) Self-evaluation; and

(4) Audience evaluations.

B. Program evaluation. Evaluating overall programs helps keep our information up-to-date and current. Often, refuge staff use program attendance and cost to compare activities, but true program evaluation must go deeper. We can identify areas needing further attention by examining use trends, location and time variables, and environmental factors. Areas to consider include:

(1) Is program participation increasing, decreasing, or staying the same?

(2) Do visitors attend more than one program or move on to other sites? Do visitors return and revisit interpretive facilities or guided programs? Do they bring their friends?

(3) Have staffing levels changed?

(4) How much of the station budget are we devoting to interpretive programs? What are those dollars buying?

(5) If too many or too few people attend some programs, what can we do to get attendance to an optimal level?

(6) Should we change or drop the program/activity?

C. Visitor reactions. We use many methods to determine visitor reaction to interpretive activities. We can:

(1) Develop comment forms in a variety of alternative formats, if needed, and make them available at a variety of locations;

(2) Interview visitors in focus groups regarding what they liked or didn't like about our interpretive activities;

(3) Observe and record visitor actions at interpretive facilities (e.g., monitor how long visitors stay, which exhibits they approach, whether they leave early from exhibits, audio-visual, or presentations, or ask thoughtful questions);

(4) Get a fresh perspective by visiting and observing other sites and then critiquing our own facilities;

(5) Observe visitors and note their behaviors when they visit refuges. Record the instances of littering, vandalism, or poaching. Is there a change in compliance with posted regulations?; and

(6) Request a Regional Office visitor services' review or invite staff from other refuges to critique your program.

D. Quality and effectiveness. The impact an activity had on the participants is the most difficult element to evaluate. We can:

(1) Find some visitor impressions by using focus groups and individual interviews;

(2) Use testimonials and unsolicited comments to assess the relative value of programs to visitors; and

(3) Evaluate quality and effectiveness through formal research by working with local colleges and universities.

Exhibit 1—Interpretive Plan Outline

A. Define key resources: Start by deciding what makes the refuge special. Does it have biological significance for key species, the ecosystem, endangered species protection, or restoration? Are there unique habitats represented or notable seasonal natural events? Are there known cultural resources requiring protection or interpretation? Has human history in the area had an impact on resources? Are you conducting habitat or population management activities? You can use maps to show resource locations. To complement the maps you should define habitat sensitivity and, if data exists, acceptable levels of visitation.

B. Define key audiences: Who are our present and future visitors?

(1) Demographics: You can determine some visitor demographics by contacting the State department of tourism, a community visitor's bureau, and neighboring attractions. You can glean some information from visitor contact stations and trailhead registration books. Even parking lot license plate counts can help indicate trends. Formal surveys go more in depth, but contact your Regional Office regarding Office of Management and Budget clearance for information allocation requirements, types of questions you can use, and the best way to administer a survey. From this data you can develop lists of visitor groups, (urban, international, short-term, repeat, schools, families, retirees, special interests like birding, hunting, and others).

(2) Visitor Expectations and Perceptions: What will each group need or expect when they arrive? What part of your interpretive program will appeal to each visitor group?

(3) Use Patterns: Does your refuge have any special concerns relating to seasons, time of day, existing or potential traffic patterns or facility capacity. Do any of these use patterns need to change?

C. Define goals and objectives: We must establish interpretive goals (guiding statements) and objectives (measurable outcomes) in the Comprehensive Conservation Plan. You should refer to this plan when developing your program. Focus on resource priorities on the refuge.

(1) Management goals focus on ways to protect resources while providing visitor opportunities.

(2) Interpretive goals identify what you hope visitors will remember, feel, appreciate, or understand after taking part in an interpretive activity. Objectives are measurable and identify what visitors will be able to do after taking part in your program.

D. Develop interpretive themes: The major messages you want visitors to take with them are themes. They can focus on refuge management issues, ecosystem issues, Refuge System issues, or on the Service. We derive themes for specific interpretive activities from overall station themes. Themes should be resource-based and stated in complete sentences. Developing good themes is difficult. Sometimes, identifying topics first, such as, Wildlife, Ecosystems, Neotropical Migrants, or Endangered Species can help. Often the theme works much like a thesis, and you should develop the theme in a manner appropriate for your audience as you plan out the program.

E. Select interpretive activities: Based on available resources, determine methods and locations for delivering your messages. You should evaluate the pros and cons of each and try to find a balance between personal and self-guided services. One way to do this is to create a chart with headings like Themes, Activities, and Locations to show how and where you will deliver your messages.

F. Implementation: After you have developed activities for your station, you should define staffing, volunteer, facility and funding needs. Prioritize and indicate possible funding sources from within and outside the Service. Input these identified needs in the Refuge Operations System (RONS) and Maintenance Management System (MMS).

G. Evaluation: You should consider evaluation at each phase of the program, especially at the beginning. Using some of the evaluation tools mentioned above, find out if you meet your interpretive goals. Have your themes become a part of the overall station experience? Are you meeting group needs and expectations? What portion of your plan may you need to change?

Dated: December 22, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[1018-AG19]

Draft Wilderness Stewardship Policy Pursuant to the Wilderness Act of 1964

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to modify our policy for implementing the Wilderness Act of 1964 and the National Wildlife Refuge System Administration Act of 1966 as amended, as Part 610 Chapters 1–7 of the Fish and Wildlife Service Manual. Congress calls for the establishment of a National Wilderness Preservation System to secure an ''enduring resource of wilderness'' for the American public. This policy updates guidance on administrative and public activities on wilderness within the National Wildlife Refuge System.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: Send comments concerning this draft wilderness stewardship policy via mail, fax or email to: National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703)358–2248; e-mail Wilderness_Policy_Comments@fws.gov. See **SUPPLEMENTARY INFORMATION** for further information on submitting comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Souheaver, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Telephone (703)358–1744.

SUPPLEMENTARY INFORMATION: The Wilderness Act of 1964 provides the basis for wilderness protection on the National Wildlife Refuge System (System). It clearly establishes that, as we carry out the Service's mission, the System mission and goals, and the individual refuge establishing purposes in areas designated as wilderness, we do it in a way that preserves wilderness character. This policy gives refuge managers uniform direction and procedures for making decisions regarding conservation and uses of the System wilderness areas.

Purpose of This Draft Policy

The purpose of this draft policy is to implement the Wilderness Act of 1964 within the System. When finalized, this policy will replace existing policy found in the Refuge Manual. It prescribes how the Federal land manager preserves the character and qualities of designated wilderness while managing for the refuge establishing purpose(s), maintains outstanding opportunities for solitude and a primitive and unconfined type of recreation, and conducts minimum requirements analyses before taking any action that may impact wilderness character.

This policy includes the following chapters.

Chapter 1 establishes responsibility for wilderness stewardship, defines terms, and establishes training requirements.

Chapter 2 describes the broad framework within which we manage wilderness, discusses the philosophical underpinnings of wilderness, requires refuges to fulfill the establishing purpose(s) of the refuge and the wildlife conservation mission of the System in ways that prevent degradation of the wilderness that otherwise comply with the requirements of the Wilderness Act, and establishes a process for conducting minimum requirements analyses.

Chapter 3 addresses the general administration of wilderness and natural and cultural resource management. It clarifies the circumstances under which generally prohibited uses (temporary roads, motor vehicles, motorized equipment, motorboats, mechanical transport, landing of aircraft, structures, and installations) may be necessary for wilderness protection. It addresses commercial uses, research, and public access. It confirms that we will generally not modify habitat, species population levels, or natural ecological processes in refuge wilderness unless doing so maintains or restores ecological integrity that has been degraded by human influence or is necessary to protect or recover threatened or endangered species.

Chapter 4 addresses public use management in wilderness. It explains that wilderness areas will emphasize providing opportunities for solitude and a primitive and unconfined type of recreation. Appropriate recreational uses in wilderness are compatible, wilderness-dependent, nonmotorized activities that involve no mechanical transport. This includes the six priority wildlife-dependent uses (hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation), if they are compatible. Special needs for persons with disabilities are also addressed.

Chapter 5 confirms that wildland fires are an ecological and evolutionary process of wilderness, and that we respond to such fires according to the refuge Fire Management Plan and in accordance with minimum requirements. We may use prescribed fire to maintain or restore ecological integrity that has been degraded by human influence or is necessary to protect or recover threatened or endangered species.

Chapter 6 provides guidance on developing Wilderness Management Plans.

Chapter 7 describes the three-part process for conducting wilderness reviews. An inventory identifies areas that meet the basic definition of wilderness; a study evaluates all the values, resources, and uses within the area; and the recommendation follows upon completion of an Environmental Impact Statement.

Fish and Wildlife Service Directives System

Because many of our field stations are located in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Fish and Wildlife Service Manual contains our standing and continuing directives with which our employees must comply and has regulatory force and effect within the Service. We use it to implement our authorities and to set forth our means of compliance with statutes, executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our responsibilities and activities.

The Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this wilderness stewardship policy into the Fish and Wildlife Service Manual as Part 610 Chapters 1–7.

Authorities

Our authorities to manage wilderness include:

A. Wilderness Act of 1964 (16 U.S.C. 1131–1136)

B. Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 410 hh—3233, 43 U.S.C. 1602–1784),

C. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), as amended.

D. Specific Service Wilderness Area Authorities. Public Laws 90–532, 91–504, 92–364, 93–429, 93–550, 93–632, 94–557, 95–450, 96–487, 96–560, 97–211, 98–140, and 101–628.

Comment Solicitation

We seek public comments on this draft wilderness stewardship policy and will take into consideration comments and any additional information received during the 60-day comment period. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: National Wildlife Refuge System, U.S. Fish and Wildlife Service, 440l North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Wilderness_Policy_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AG19'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703)358–1744. You may also fax comments to: National Wildlife Refuge System, (703)358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

This draft Fish and Wildlife Service Manual Wilderness Stewardship policy will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 60-day comment period.

Required Determinations

1. *Regulatory Planning and Review.* In accordance with the criteria in Executive Order 12866, this document is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This document will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this document is to update the wilderness management policy implemented by the Wilderness Act of 1964 pursuant to the National Wildlife Refuge System Improvement Act of 1997. A large portion of the updated policy addresses administrative actions and procedures that will enhance the public's wilderness experience by better preserving wilderness character. The updated policy makes only minor modifications to existing refuge wilderness public use programs. These modifications include: encouraging the use of Leave No Trace techniques that will leave the wilderness unimpaired for subsequent users; prohibiting extreme sports (which currently rarely occur); emphasizing the importance of solitude, risk, and challenge in a wilderness experience; encouraging education programs to better inform the public about wilderness; monitoring public use and its physical and social effects; and addressing the special needs of persons with disabilities. The basic restrictions on public use have not changed from current policy: we limit public travel to nonmotorized, nonmechanized means; we allow only commercial uses necessary for realizing the recreational purposes of the wilderness; and we allow scientific studies that conform to minimum requirements.

The data are insufficient to provide more than broad estimates about the effects of this updated policy on public use of wilderness areas on national wildlife refuges. The Service expects that refuges that improve the quality of their wilderness areas, and thereby increase the opportunities for high-quality wilderness experiences, will see an increase in public use. The Service estimates that on balance there will be an increase of 10 percent in the public's use of wilderness areas on refuges.

Following a best-case scenario, three quantifiable outcomes would be attributable to the updating of the wilderness policy. First, if 75 percent of the refuges that currently have designated wilderness were to establish a quality wilderness experience, it would mean an estimated 297,929 user days with a higher level of consumer surplus (Table 1). Second, if an additional 10 percent participation rate in wilderness experiences took place, it would mean an additional 39,724 user days. Third, some of the former wilderness users would switch to sites that allow motorized entrance or some other prohibited mode in wilderness areas. This last effect would be offset by new entrants to the wilderness experience, therefore, we estimate only the additional consumer surplus from new entrants since we have no reason to believe a change in consumer surplus would occur for those users who choose alternative sites with characteristics similar to what they were accustomed.

Since 1991, the trend in wildlife-related activities away from home has been increasing at a slow but steady rate, so we have reason to believe that quality experiences will attract new participants. Using the value of the difference in the upper and lower bounds of the 95 percent confidence interval for average consumer surplus to represent the estimate of the increase in consumer surplus for higher quality fishing and hunting (Walsh, Johnson, and McKean, 1990) yields an estimated increase in consumer surplus of $7.1 million annually. The use of the 95 percent confidence interval will remove the results of outlier studies and will be an acceptable estimate of quality differences in the consumer surplus estimates. To this we add the increase in consumer surplus for an estimated 10 percent new participants, for a total of $8.6 million annually attributable to the updated policy on wilderness management.

The probability of upgrading all refuges with wilderness programs to true wilderness characteristics, as defined by Congress, is very low. Resource constraints have kept these refuges from upgrading wilderness experiences, and it is unlikely that this updated policy will cause all refuges with wilderness designation to upgrade their programs immediately. As a result, we do not expect that this document will increase consumer surplus by as much as $8.6 million annually. Consequently, this document will have a small measurable economic benefit on the U.S. economy but will not have an annual effect of $100 million or more needed for a determination as a significant rulemaking action.

b. This document will not create inconsistencies with other agencies' actions. This updated policy has been developed with the assistance of personnel versed in Federal wilderness

policy, and is consistent with the wilderness policies of the U.S. Forest Service, National Park Service, and Bureau of Land Management. An interagency wilderness committee meets monthly to discuss and coordinate on wilderness issues. The committee received a copy of the draft policy update and identified no major inconsistencies.

c. This document will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This updated policy prescribes the management of designated wilderness within the National Wildlife Refuge System. Access to wilderness will be consistent with the outstanding rights-of-way, easements of record, enabling legislation, or other rights granted by law. User fees will not be charged as a result of this policy.

d. This document will not raise novel legal or policy issues. This policy is a revision and clarification of similar policy finalized in May 1986 and, as such, does not present any significant opportunity for novel issues.

2. *Regulatory Flexibility Act.* We certify that this document will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This policy is administrative, legal, technical, and procedural in nature and provides updated instructions for the maintenance of wilderness areas on the National Wildlife Refuge System. This policy does not increase the types of recreation allowed on the Refuge System but establishes an emphasis on the characteristics desired for a wilderness experience. As a result, opportunities for wilderness experiences on national wildlife refuges may increase. The maintenance of wilderness characteristics are likely to increase visitor activity on the national wildlife refuge. But, as stated above, there is a slight increase in the trend for this activity so the increase may not be that of a substitute site for the activity. At least some, if not all, of the increase will be in participation rates for wilderness use. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best-case scenario and is expected to overstate the benefits to local businesses. The latest information on the distances traveled for fishing and hunting activities indicates that over 80 percent of the participants travel less than 100 miles (160 km) from home to engage in the activity. This indicates that participants will spend travel-related expenditures in their local economy. Since participation is scattered across the country, many small businesses benefit. Expenditures for food and lodging, transportation, and other incidental expenses are identified in the National Survey of Fishing, Hunting, and Wildlife Associated Recreation. Using the average expenditures for these categories for wildlife-related recreation away from home with the expected additional participation on the Refuge System yields the following estimates (Table 1).

TABLE 1.—ESTIMATION OF POSSIBLE WILDERNESS OPPORTUNITIES WITH NEW REFUGE POLICY

	Refuge surplus visits	Consumer per day	Without policy update (base)	With policy update change
Refuge Visits With:				
Lower Quality Wilderness	297,929	$12.62	$3,759,867	$7,126,468
High Quality Wilderness	99,310	36.54	3,628,778	
Total Refuge Wilderness Visits	397,239		7388,645	
Increased Wilderness Visits (10%)	39,724	36.54		1,451,511
Total Increase in Consumer Surplus				8,577,979

Using a national impact multiplier for wildlife-associated recreation developed for the report ''1996 National and State Economic Impacts of Wildlife Watching'' for the estimated increase in direct expenditures yields a total economic impact of $46.0 million (Table 2). Since we know that most of the fishing and hunting (and most likely other wildlife-dependent recreation activities) occurs within 100 miles (160 km) of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy and, therefore, would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $46.0 million and most likely considerably less. Since 80 percent of the participants travel less than 100 miles (160 km) to engage in hunting and fishing activities (and we assume that a similar relationship would hold for other wildlife-dependent activities), their spending patterns would not add new money in the local economy and, therefore, the real impact would be on the order of $9.2 million annually.

TABLE 2.—ESTIMATED EXPENDITURES ASSOCIATED WITH ADDITIONAL REFUGE VISITATION

Total Refuge wilderness visits	397,239
A 10% increase in visits	39,724
Average Expenditures per trip	$397
Total direct expenditures	$15,770,428
National impact multiplier	2.92
Total impact	$46,049,650
80% of impact is a transfer	$36,839,720
20% of impact is new money benefit	$9,209,930'

Many businesses (both large and small) may benefit from some increased wildlife refuge visitation. However, we expect that much of this benefit will go to small business because wilderness areas tend to be in rural areas where fewer large businesses locate. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the document will have a significant economic effect on a substantial number of small entities in any region or nationally.

3. *Small Business Regulatory Enforcement Fairness Act.* The document is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This document:

a. Does not have an annual effect on the economy of $100 million or more. The addition of some wilderness experience opportunities at refuges

would generate expenditures by wilderness participants with an economic impact estimated at $9.2 million per year. Consequently, the maximum benefit of this document for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This document will have a small effect on the expenditures of new participants for wilderness opportunities of Americans. Under the assumption that all wilderness opportunities would be of high quality, participants would be attracted to the Refuge System. If the refuge were closer to the participant's residence than alternative sources of wilderness experiences, then a reduction in travel costs would occur and benefit the participant. The Service does not have information to quantify this reduction in travel cost but has to assume that since most people travel less than 100 miles (160 km) to hunt and fish, that the reduced travel cost would be small for the additional days of wilderness activities generated by this document. We do not expect this document to significantly affect the supply or demand for wilderness opportunities in the United States and, therefore, should not affect prices for equipment and supplies, or the retailers that sell equipment. Refuge System wilderness opportunities account for a small portion of the wilderness opportunities available in the contiguous United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Because this document represents such a small proportion of wildlife-related recreational spending, there will be no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuge visitors made 397,239 visits to refuges for wilderness activities during 1999, compared to 34.9 million visitors for all activities on Refuge System lands. This document seeks to preserve wilderness characteristics for those participants who want this experience and is aimed at providing guidance to Federal managers in establishing quality programs, where the opportunity exists for wilderness programs. Refuges that have or establish wilderness programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase with a total of 66 refuges participating. Consequently, there is no significant employment or small business effects.

4. *Unfunded Mandates Reform Act.* In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This document will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. See 1.a., above.

b. This document will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

5. *Takings.* In accordance with Executive Order 12630, the document does not have significant takings implications. A takings implication assessment is not required. This policy will not change the ability of inholders to access their property, although it may affect the way in which they may access it. Depending on the specifics of the easements of record, outstanding rights-of-way, enabling legislation, or other rights granted by law, to disturb the fewest wilderness users we may require inholders to modify their: routes of entry so that access will be through a non-wilderness area; method of access, and use of nonmotorized means; or time of entry.

6. *Federalism.* This document does not have significant Federalism effects to warrant the preparation of a Federalism Assessment under Executive Order 13132. This document will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

7. *Civil Justice Reform.* In accordance with Executive Order 12988, the Office of the Solicitor has determined that the document does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The policy will clarify established policy and result in better understanding of the policies by refuge wilderness visitors.

8. *Paperwork Reduction Act.* This policy does not require any information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995 is not required.

9. *National Environmental Policy Act.* We have analyzed this document in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). This document does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

We will need to develop Wilderness Management Plans for all refuges with wilderness. We will either incorporate these plans directly into refuge Comprehensive Conservation Plans or as step-down management plans, pursuant to our refuge planning guidance in 602 FW 1–3. We prepare these plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

10. *Government-to-Government Relationship with Tribes.* In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects. We coordinate wilderness use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 1—Authorities, Responsibilities, Definitions, and Training Requirements

610 FW 1.1

1.1 *What is the purpose of this chapter?* Our Wilderness Stewardship policy describes how we manage refuge wilderness to meet refuge purposes and accomplish the mission of the National Wildlife Refuge System (System), while protecting the enduring resource of wilderness. This chapter provides guidance for the implementation of the Wilderness Act of 1964 and the National Wildlife Refuge System Administration Act of 1966, as amended. This chapter states our authorities and responsibilities, describes wilderness character and related terms, and establishes training requirements.

1.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the

Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

1.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management include:

A. Wilderness Act of 1964 (16 U.S.C. 1131–1136).

B. Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 410 hh–3233, 43 U.S.C. 1602–1784).

C. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee) (NWRSAA01966), as amended.

D. Clean Air Act Amendments of 1990; Public Law 101–549.

E. Specific Service Wilderness Area Authorities. Public Laws 90–532, 91–504, 92–364, 93–429, 93–550, 93–632, 94–557, 95–450, 96–487, 96–560, 97–211, 98–140, and 101–628.

F. Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712) as amended.

G. Endangered Species Act of 1973 (16 U.S.C. 1531–1544) as amended.

H. National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*

I. Archeological Resources Protection Act as amended, 16 U.S.C. 470aa–mm.

J. American Antiquities Act of 1906, 16 U.S.C. 431–433.

K. American Indian Religious Freedom Act of 1978, 42 U.S.C. 1996 and 1996a.

L. Americans with Disabilities Act of 1990, 42 U.S.C. 12207.

M. Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 3001–3013.

N. National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508.

1.4 *What are our responsibilities?* A. Director. The Director provides national policy for managing wilderness and designates a National Wilderness Coordinator.

B. Regional Director. The Regional Director oversees the Regional wilderness management program, designates a Regional Wilderness Coordinator, and assembles Regional Wilderness Review Teams consisting of the Refuge Manager, selected refuge staff, Refuge Supervisor, and the Regional Wilderness Coordinator to coordinate wilderness reviews.

C. Refuge Manager. The Refuge manager protects, manages, and monitors wilderness areas in accordance with Service policy and the unit's Wilderness Management Plan (WMP); ensures that the refuge Comprehensive Conservation Plan (CCP) addresses the management direction of the wilderness units, and determines the need for a WMP; develops and implements the WMP; conducts wilderness reviews; and provides annual information to the Regional Wilderness Coordinator on the status of ongoing inventories and research initiatives used to monitor wilderness areas. Refuge managers may make minimum requirement decisions (610 FW 2).

D. National Wilderness Coordinator. The National Wilderness Coordinator advises the Chief, National Wildlife Refuge System, on wilderness issues; coordinates wilderness management policies with other wilderness management agencies (Bureau of Land Management, National Park Service, and Forest Service); and coordinates and provides assistance to Regional and refuge offices concerning wilderness issues.

E. Regional Wilderness Coordinator. The Regional Wilderness Coordinator advises the Regional directorate, refuge supervisors, refuge managers, and refuge employees on wilderness issues; coordinates and approves wilderness reviews; reviews Wilderness Management Plans; maintains data on wilderness acreage and training requirements within the Region; and provides a Wilderness Acreage Report (See Exhibit 2) to the Chief, National Wildlife Refuge System, by October 1 of each year. The coordinator concurs on all minimum requirement/tool decisions requiring elevation and receives written copies of all minimum requirement decisions.

1.5 *How do we effectively coordinate with the States?* To the extent possible, we coordinate with States through the conduct of regular meetings to discuss cooperative management needs and approaches. Through the comprehensive conservation planning process, we encourage input from and strive for cooperation and coordination with State fish and wildlife agencies, non-government organizations, universities, and others in setting wilderness management goals and objectives. Our regulations allowing hunting of resident wildlife or fishing within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

1.6 *What terms do we use in this policy?* A. Adequate Legal Access. The combination of routes and modes of travel that will have the least impact on the wilderness resource, consistent with the outstanding rights-of-way, easements of record, enabling legislation, or other rights granted by law.

B. Aldo Leopold Wilderness Research Institute. An institute located in Missoula, Montana, and established in 1993 to develop ''the knowledge needed to improve management of wilderness and other natural areas.'' The Institute operates under an interagency agreement among the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, the Forest Service, and the Biological Resources Division of the U.S. Geological Survey.

C. Alien Species. With respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

D. Arthur Carhart National Wilderness Training Center. A training center, located in Missoula, Montana, established in 1993 to ''foster interagency excellence in wilderness stewardship by cultivating knowledgeable, skilled and capable wilderness managers and by improving public understanding of wilderness philosophy, values, and processes.'' The Carhart Center offers training across the country using experts from all levels of the four Federal wilderness-managing agencies, and outside organizations. The Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, and the Forest Service financially support the Carhart Center.

E. Commercial Photography and Filming. Visual and/or sound recording by a business or enterprise for a market audience such as for a documentary, promotional, television or feature film, advertisement, or similar project. It does not mean bona fide breaking news coverage or casual visitor use that does not adversely impact on resources or visitation.

F. Designated Wilderness Area. An area designated in legislation and that we manage as part of the National Wilderness Preservation System.

G. Emergency. A situation that requires immediate action because of imminent danger to the health and safety of persons within a wilderness area.

H. Generally Prohibited Use. Temporary roads, motor vehicles, motorized equipment, motorboats, mechanical transport, landing of aircraft, structures, and installations generally prohibited by the Wilderness Act Section 4 (c). We may allow them

only ''as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area) * * *'' or if provided for by the specific wilderness designation legislation for a particular wilderness.

I. Indigenous Species. This means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

J. Invasive Species. This means an alien species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

K. Limits of Acceptable Change. A planning and management framework for establishing and maintaining acceptable and appropriate environmental and social conditions in recreation settings. It emphasizes the conditions we maintain or attain in an area, rather than how much use it can accommodate.

L. Mechanical Transport. Any contrivance for moving people or material on or over land, water, or air that has moving parts, provides a mechanical advantage to the user, and is powered by a living or nonliving power source. We include, but do not limit this to, sailboats, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. We do not include wheelchairs when used by those whose disabilities require wheelchairs for locomotion. We also do not include skis, snowshoes, rafts, canoes, sleds, travois, or similar primitive devices without moving parts.

M. Minimum Requirement Analysis. A documented process used for determining the appropriateness of all actions affecting wilderness.

N. Minimum Tool. The least intrusive tool, equipment, device, force, regulation, or practice determined to be necessary to accomplish an essential task, that will also achieve the wilderness management objective.

O. Motorized Equipment. Machines that use a motor, engine, or other nonliving power source. We include, but do not limit this to, chain saws, aircraft, snowmobiles, generators, motor boats, and motor vehicles. We do not include small battery- or gas-powered devices such as shavers, wristwatches, flashlights, cameras, stoves, or other similar small equipment. We do not include motorized wheelchairs used as defined under mechanical transport.

P. Nondegradation. This concept specifies that, at the time of wilderness designation, the conditions prevailing in an area establish a benchmark of that area's naturalness and wildness. We will not allow degradation of these conditions. The presence of undesirable conditions in one wilderness does not set a precedent or standard that we can apply to other areas.

Q. Primitive Recreation. Nonmotorized activities that provide dispersed, undeveloped recreation which do not require facilities or mechanical equipment.

R. Primitive Tool. The equipment or methods that make use of the simplest available technology that relies on human or animal power.

S. Proposed Wilderness. An area of the Refuge System that the Secretary of the Interior (Secretary) has recommended to the President for inclusion in the National Wilderness Preservation System.

T. Roadless Area. A reasonably compact area of undeveloped Federal land that possesses the general characteristics of a wilderness and within which there is no improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use. A route maintained solely by the passage of vehicles does not constitute a road.

U. Roadless Island. A roadless area that is surrounded by permanent waters or that is markedly distinguished from surrounding lands by topographical or ecological features such as precipices, canyons, thickets, or swamps.

V. Solitude. One of the key descriptors of wilderness in the Wilderness Act. Wilderness solitude is a state of mind, a mental freedom that emerges from settings where visitors experience nature essentially free of the reminders of society, its inventions, and conventions. Privacy and isolation are important components, but solitude also is enhanced by the absence of other distractions, such as large groups, mechanization, unnatural noise, signs, and other modern artifacts. It is a highly valued component of the visitor's experience because it is conducive to the psychological benefits associated with wilderness and one's free and independent response to nature.

W. Temporary Structure. Any structure that is easy to dismantle, could be removed completely from a site between periods of actual use, and must be removed at the end of each session of use if the intervening non-use period is greater than 30 days. In Alaska, we manage temporary structures in accordance with Section 1316(a) of the Alaska National Interest Lands Conservation Act.

X. Untrammeled. A key descriptor of wilderness in the Wilderness Act, untrammeled refers to the freedom of a landscape from the human intent to intervene, alter, control, or manipulate natural conditions or processes to provide particular benefits.

Y. Wheelchair. A device designed solely for the use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

Z. Wilderness Review. The process we use to determine if we should recommend System lands and waters to Congress for wilderness designation. The wilderness review process consists of three phases: inventory, study, and recommendation. The inventory is a broad look at the refuge to identify lands and waters that meet the minimum criteria for wilderness. The study evaluates all values (ecological, recreational, cultural, spiritual), resources (*e.g.,* wildlife, water, vegetation, minerals, soils), public uses, and management within the Wilderness Study Area. The findings of the study determine whether we will recommend the area for designation as wilderness.

AA. Wilderness Study Area. An area we are considering for wilderness designation. We establish it following the inventory component of a wilderness review. It includes all areas that are still undergoing the review process and areas recommended for wilderness designation by the Director of the U.S. Fish and Wildlife Service (Director) to the Secretary.

BB. Wilderness Values. Wilderness values are physical (wildlife, ecosystems, and natural processes), psychological (opportunity for solitude, i.e., avoid the sights, sounds, and evidence of humans), symbolic (national and natural remnants of American cultural and evolutionary heritage), and spiritual (connection with nature and primal forces).

1.7 *What are the training requirements for National Wildlife Refuge System staff?* A. National Wilderness Coordinator. The National Wilderness Coordinator will attend the next available Arthur Carhart National Wilderness Training Center National Wilderness Stewardship training course following appointment to the position, unless the individual has attended a previous national session, and at least every 2 years, a ''Wilderness Issues'' course, or another course designed by the Training Center to serve as a review of wilderness policy and an update of current wilderness issues.

B. National Wildlife Refuge System Office Staff. Other staff involved in wilderness planning, protection, management, budget, or recreation should attend a National or Regional

Wilderness Stewardship training course or specialized wilderness courses offered by the Training Center.

C. Regional Wilderness Coordinators. The Regional Wilderness Coordinators will attend the next available National Wilderness Stewardship training course and Regional Wilderness Stewardship training course following their appointment to the position, unless they have attended a previous national or regional session and at least every 2 years, a ''Wilderness Issues'' course, or another course designed by the Training Center to serve as a review of wilderness policy and an update of current wilderness issues.

D. Refuge Supervisors. Refuge supervisors will attend the National Wilderness Stewardship training course within 2 years, following their appointment to the position, unless they have attended a previous national session and at least every 4 years, a ''Wilderness Issues'' course, or another course designed by the Training Center to serve as a review of wilderness policy and an update of current wilderness issues.

E. Refuge Managers. Refuge Managers (including complex and unit managers) of refuges containing designated wilderness or a Wilderness Study Area will attend the National Wilderness Stewardship training course within 1 year of their appointment to the position, unless they have attended a previous national session. Other Refuge Managers (including complex and unit managers) should attend the National Wilderness Stewardship training course.

F. Other Refuge Staff. We should train staff members and volunteers who contact visitors on a regular basis regarding wilderness areas in low-impact or ''Leave-No-Trace'' techniques and be able to help the public make good choices in applying the principles of outdoor ethics.

G. Regional Chiefs, National Wildlife Refuge System. Regional Chiefs, National Wildlife Refuge System, should attend the National Wilderness Stewardship training course within 2 years following their appointment to the position, unless they have attended a previous national session.

1.8 *What are the training requirements for Ecological Services and Fisheries staff?* A. Project Leaders. Project leaders with significant responsibility for Endangered Species Act consultations with wilderness managers or fisheries management in wilderness areas within the Service or with any other Federal agency will attend the National Wilderness Stewardship training course within 2 years of their appointment to the position, unless they have attended a previous national session.

B. Other Staff. We encourage other Ecological Services and Fisheries staff with significant involvement in issues that affect wilderness planning, protection, management, or recreation to attend a Regional Wilderness Stewardship training course or specialized wilderness courses offered by the Training Center.

1.9 *When should State employees attend wilderness training?* When space is available, the Service may recommend State wildlife managers for a Regional Wilderness Stewardship training course or specialized wilderness courses offered by the Training Center.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 2 General Overview

610 FW 2.1

2.1 *What is the purpose of this chapter?* This chapter provides an overview and policy foundation for implementation of the Wilderness Act of 1964 and the National Wildlife Refuge System Administration Act of 1966 as amended. This chapter states the principles of wilderness management, and clarifies the application of the minimum requirement concept.

2.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

2.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management, are contained in 610 FW 1.3.

2.4 *What is the broad framework within which we manage wilderness?* A wilderness overlay deepens and broadens our responsibility to the refuge landscape, compelling us to think beyond our obligation to manage the area for the purposes for which it was established. Wilderness itself is a resource that embodies intangible values as well as biophysical values. As a place ''where the earth and its community of life are untrammeled by man,'' wilderness serves as a reservoir of biological diversity, biological integrity, and environmental health. Wilderness is also a setting for compatible recreation, restoration, and inspiration, and a touchstone to our heritage as Americans, and more universally, as members in the community of life. The convergence of these diverse values (ecological, experiential, and symbolic) into one evocative and encompassing concept is the sum and substance of wilderness—and the source of its power to connect a diversity of people to these remnant landscapes. Wilderness is a place of restraint, for managers as well as visitors.

2.5 *What is wilderness character?* A.

> * * * each agency administering any area designated as wilderness shall be responsible for preserving the *wilderness character* of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its *wilderness character.* [emphasis added]—Section 4 (b), The Wilderness Act of 1964

B. Preserving ''wilderness character,'' referenced throughout the Act and throughout this policy, is one of our criteria for judging the appropriateness of potential management actions, public uses, and technologies in wilderness. Preserving wilderness character requires that we maintain the wilderness condition: the natural, scenic condition of the land, biological diversity, biological integrity, environmental health, and ecological and evolutionary processes. But the character of wilderness embodies more than a physical condition.

C. The character of wilderness refocuses our perception of nature and our relationship to it. It embodies an attitude of humility and restraint that lifts our connection to a landscape from the utilitarian, commodity orientation that often dominates our relationship with nature to the symbolic realm serving other human needs. We preserve wilderness character by our compliance with wilderness legislation and regulation, but also by imposing limits upon ourselves.

D. The legislative history of the Wilderness Act recognizes the encompassing nature of wilderness character:

> We deeply need the humility to know ourselves as the dependent members of a great community of life, and this can indeed be one of the spiritual benefits of a wilderness experience. Without the gadgets, the inventions, the contrivances whereby men have seemed to establish among themselves an independence of nature, without these distractions, to know the wilderness is to know a profound humility,

to recognize one's littleness, to sense dependence and interdependence, indebtedness, and responsibility.—(See Zahniser, The Need for Wilderness Areas, 1956, Exhibit 8)

E. We uphold wilderness character with every decision concerning public uses, management techniques, or technologies that might degrade the wilderness condition. We strengthen wilderness character with every decision to forego actions that have no seeming physical impact, but would detract from the idea of wilderness as a place set apart, a place where our uses, convenience, and expediency do not dominate. As the role we assume shapes the character of wilderness, so it shapes our character as its stewards. (See Exhibit 3 for the complete description of wilderness character.)

2.6 *What are the principles for managing wilderness?* As stated in the Wilderness Act, the purposes of the Act are within and supplemental to the purposes of the lands we administer. We observe five key principles in managing wilderness:

A. Accomplish refuge purposes, the mission of the National Wildlife Refuge System (System), and the purposes of the Wilderness Act.

B. Secure ''an enduring resource of wilderness'' by maintaining the wilderness character, biological diversity, biological integrity, environmental health, and its community of life.

C. Administer wilderness areas in a manner that retains wilderness character, is compatible with all of the purposes of a refuge, and leaves them unimpaired for future use and enjoyment as wilderness.

D. Provide opportunities for primitive recreational experience, emphasizing activities that are wildlife and wilderness dependent. Maintain physical, social, and managerial settings that are conducive to maintaining the experience of solitude, inspiration, adventure, challenge, and other aspects of wilderness character.

E. Provide opportunities for and conduct wilderness-related research in a manner compatible with all of the refuge purposes and preserving the wilderness environment.

2.7 *What are the purposes of the Wilderness Act?* The purposes of the Wilderness Act are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System, and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

2.8 *How do Refuge Managers accomplish both the establishing purposes of a refuge and the purposes of the Wilderness Act?* A. The National Wildlife Refuge System Improvement Act (NWRSIA) amendments to the NWRSAA state that the establishing purposes of a refuge ''mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.''

B. The Wilderness Act states that ''The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered * * *''

C. The NWRSIA House Report 105–106 says that ''This policy serves to underscore that the fundamental mission of our Refuge System is wildlife conservation: wildlife and wildlife conservation must come first.''

D. Our wildlife conservation mission is entirely consistent with our wilderness responsibilities. Healthy and natural populations of wildlife are an important component of wilderness. *In Fulfilling the Promise,* the Service's long-term vision document for the System, we recognize wilderness ''is a reservoir of biodiversity and natural ecological and evolutionary processes.''

E. Because the Wilderness Act purposes become within and supplemental to the purposes of refuges where there is designated wilderness, we modify our management strategies to accomplish both the purposes for which the refuge was established and the purposes of the Wilderness Act. We continue to fulfill the establishing purposes of the refuge and the wildlife conservation mission of the System using management strategies and techniques that prevent degradation of the wilderness resource and comply with the requirements of the Wilderness Act. We do not authorize uses of refuge wilderness that the Wilderness Act prohibits, except when the use is the minimum requirement for the administration of the area for the purpose of the Wilderness Act or in an emergency involving the health and safety of persons.

2.9 *What activities do we prohibit in wilderness?* Section 4 (c) of the Wilderness Act prohibits certain uses in wilderness. It refers to prohibited uses by the public as well as prohibited uses by the wilderness administrators. Section 4 (c) says:

''Except as specifically provided for in this Act * * * there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.''

A. The Wilderness Act allows for commercial enterprises or services in wilderness when they are ''necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.''

B. Subsequent wilderness legislation may permit uses of individual wilderness areas that the Wilderness Act generally prohibits, and we comply with the provisions of those laws. In Alaska, ANILCA authorizes use of motorized boats and snowmobiles, and the landing of airplanes, for public access in wilderness.

2.10 *How do we determine if a generally prohibited use is the minimum requirement to administer the area for the purposes of the Wilderness Act?* We conduct and document a minimum requirement analysis for all administrative actions that involve one or more of those things generally prohibited by the Wilderness Act, or for any proposed administrative activity that may impact the wilderness resource and character. We authorize a generally prohibited use only if we demonstrate that it is necessary to meet the minimum requirements for the administration of the area in accordance with the Wilderness Act.

A. We will use the interagency guidelines included in Exhibit 4 as procedures for assessing proposed administrative activities, to the extent that they do not conflict with this policy. In essence, these procedures allow us to answer two questions:

(1) Do I need to take some action?

(2) How can I take the action and have the least impact?

B. The analysis helps to clearly weigh the benefits and impacts (including intangible effects on wilderness character) and the cumulative effects of the activity in conjunction with other actions and methods we are applying within the wilderness. We will document the minimum requirement analysis in writing.

2.11 *Can we use a minimum requirement analysis to allow any*

administrative action in wilderness? No. We consider permanent roads and most commercial enterprises prohibited uses in wilderness, and unless specific legislation authorizes their use, we will not authorize their use. We may authorize a generally prohibited use, but only after documenting the minimum requirement analysis. Administrative approval of generally prohibited actions should be temporary and rare. Only those actions that preserve wilderness character and/or have localized, short-term adverse impacts will be acceptable.

A. In Alaska, ANILCA authorizes use of motorized boats and snowmobiles, and the landing of airplanes, for public access in wilderness. Therefore, we may use motorized boats and snowmobiles for access in Alaskan wilderness without conducting a minimum requirement analysis.

2.12 *Can refuge managers take management actions in wilderness to maintain and restore natural conditions if doing so involves uses generally prohibited by the Wilderness Act?* Yes, if we determine the action to be the minimum requirement necessary to administer the area for the purposes of the Wilderness Act. Wilderness character has components of both wildness [''A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man * * *''; Wilderness Act Sec.2(c)] and naturalness [''* * * an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions * * *''; Wilderness Act Sec.2(c)].

A. National wildlife refuges are places where we conserve wildlife and its habitat and we manage for a natural diversity of habitat and species within wilderness. If, for example, an alien species invades a refuge, it is appropriate to eliminate or control it to protect important wildlife habitat and restore biological diversity, biological integrity, and environmental health. In refuge wilderness, we use restraint and choose techniques that protect wildness by avoiding motorized methods, mechanical transport, or the use of permanent structures whenever possible. We also must assure that our management techniques are effective to protect the naturalness of the area. We do this by always conducting a minimum requirement analysis where we review the effects of proposed actions on both wildness and naturalness.

2.13 *What effect do emergencies have on the Wilderness Act's prohibition of uses?* In an emergency involving the health and safety of persons within the wilderness, or where we must traverse wilderness to reach such persons, we may use, or authorize, motorized vehicles and equipment and mechanized transport or land aircraft. We will not need a minimum requirement analysis but should take all steps possible to respond to the emergency without unnecessarily damaging or detracting from the area's wilderness character.

2.14 *When must we conduct a minimum requirement analysis?* A. If the refuge has an approved Wilderness Management Plan (WMP) no older than 15 years, and it includes a written minimum requirement analysis for each planned administrative action that may allow a generally prohibited use (*e.g.,* chainsaws, motorized vehicles, aircraft use, radio repeater sites, rock drills, patrol structures) or have the potential to impact wilderness resources and values, we may carry out those administrative actions explicitly as described in the plan.

The analysis in the WMP must include an estimate of how frequently each administrative action resulting in a generally prohibited use will take place. If circumstances significantly change, or we wish to allow the same nonconforming use in a different part of the wilderness, we must conduct another minimum requirement analysis. If a proposed administrative action was not identified in the WMP, and if it involves a generally prohibited use or impacts the wilderness character and resource, we must conduct a minimum requirement analysis before we allow the proposed action.

B. If the refuge does not have an approved WMP, or one older than 15 years, we must conduct a minimum requirement analysis once a year on each planned administrative action that may result in a generally prohibited use (*e.g.,* chainsaws, motorized vehicles, aircraft use, radio repeater sites, rock drills, patrol structures) or have the potential to impact wilderness resources and values, even if it is a recurring action.

2.15 *What should we consider to determine if an action poses a significant impact to wilderness?* We must consider the full range of wilderness values and character when determining whether or not an action will have an adverse impact on wilderness. These values include the preservation of natural conditions (including the lack of unnatural noises and lights: see Exhibit 5); cultural resource values; the assurance of outstanding opportunities for solitude; the assurance that the action will not diminish the potential for the public to have a primitive and unconfined type of recreational experience; and the assurance that we will preserve wilderness character in an unimpaired condition. Cost or convenience usually do not determine the minimum requirement.

2.16 *Who may make minimum requirement decisions?* Refuge Managers may make minimum requirement decisions only if they have attended the Arthur Carhart Wilderness Training Center national wilderness stewardship course. If managers lack this training, they must submit their written minimum requirement analyses to their supervisor for approval. If the supervisor lacks training, then the supervisor shall request review from an individual with training. In emergencies (see definition 610 FW 1.6G), Refuge Managers without the wilderness training may take appropriate action, but should take all steps possible to respond to the emergency without unnecessarily damaging or detracting from the area's wilderness character.

2.17 *How does the Leave-No-Trace Program affect our management practices?* We have adopted the interagency Leave-No-Trace (LNT) program as our standard regarding minimum impact practices for both the public and ourselves. We influence public ethics of minimum impact by the example we set in the way we conduct our business in the wilderness. We will apply LNT principles and practices to all forms of administrative actions within wilderness. See Exhibit 6 LNT Memorandum of Understanding.

2.18 *Are subsistence uses allowed in wilderness?* In Alaska, we allow subsistence uses by local, rural residents. They are the priority consumptive uses of renewable resources in refuge wilderness, per Title VIII of ANILCA.

2.19 *How will we achieve consistency in managing wilderness?* Four Federal agencies administer wilderness areas: the Fish and Wildlife Service, the Bureau of Land Management, the National Park Service, and the Forest Service. Together we administer the 104-million-acre (41.6-ha) National Wilderness Preservation System, established under the Wilderness Act ''for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness.''

A. We maintain effective intra-agency and interagency communications and cooperation, and encourage, sponsor, and participate in interagency training and workshops designed to promote the sharing of ideas, concerns, and techniques related to wilderness management. We support the Arthur Carhart National Wilderness Training Center and the Aldo Leopold Wilderness Research Institute.

B. We seek to achieve consistency in wilderness management objectives, techniques, and practices wherever possible. In areas where our wilderness adjoins wilderness administered by another land management agency, the Refuge Manager coordinates with adjacent wilderness units to achieve as much consistency as possible in the application of wilderness regulations and management techniques. Coordination can include, but is not limited to, programs and policy concerning the issuance of permits, group and party size, research projects, limits on campfires and pets, and other resource and visitor management issues. We encourage Refuge Managers to consider creating joint management plans with neighboring wilderness areas, where possible.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 3 Wilderness Administration and Natural and Cultural Resource Management in Wilderness

610 FW 3.1

3.1 *What is the purpose of this chapter?* This chapter provides specific direction and guidance on wilderness administration and natural and cultural resource management in wilderness.

3.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

3.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management, are contained in 610 FW 1.3.

3.4 *What is the general policy for administering wilderness and managing natural and cultural resources in wilderness?* We plan and conduct resource management activities in wilderness to conform with the Wilderness Act's purposes of securing ''an enduring resource of wilderness'' and providing opportunities for ''solitude or primitive and unconfined types of recreation.'' We must document a minimum requirement analysis (see 610 FW 2) for all administrative actions that may diminish wilderness character, especially if they may involve any actions generally prohibited. We will maintain the biological diversity, biological integrity, and environmental health (see 601 FW 3) of wilderness areas. We will apply the principle of nondegradation to wilderness management, and we will measure and assess our actions against each wilderness area's own natural, unimpaired condition.

3.5 *What are the elements of wilderness administration?* A. Structures and Installations. Section 4(c) of the Wilderness Act generally prohibits structures and installations in wilderness areas.

(1) Existing structures and installations. After Congress has designated a wilderness area, we will make an inventory of all existing structures and installations. We may retain structures if we determine them to be of historic significance, essential to accomplish unit purposes, or required to ensure public safety. See 610 FW 3.7C for additional guidance regarding the management of historic structures.

(2) Removal. We will remove structures and installations that are not of historical value, not essential for wilderness administration, not essential to accomplish unit purposes, and not necessary for public safety or allow them to naturally deteriorate. If we decide to restore a site, we allow regeneration by natural succession if soil and climate conditions permit. If revegetation is necessary, we use indigenous plant species.

(3) Construction and maintenance. We will not construct or maintain an administrative structure or installation in wilderness unless it is essential to administering the area as wilderness and accomplishing refuge purposes. We will not construct or maintain structures for administrative convenience, economy of effort, or convenience to the public. Wilderness users should be self-supporting in terms of shelter. In all instances, we should design, construct, or maintain facilities using native materials that blend into the natural landscape. We may establish new structures and facilities identified in Section 1310 of ANILCA on wilderness areas in Alaska after consultation between the head of the requesting Federal agency and the Secretary, and in accordance with such terms and conditions as mutually agreed upon to minimize the adverse effects of such structures and facilities.

(4) Lighthouses. Wilderness status does not alter the U.S. Coast Guard's right to access and operate lighthouses; however, we may allow use of motorized vehicles only if we approve them after documenting a minimum requirement analysis.

B. Roads. Permanent roads are a prohibited use in wilderness [Wilderness Act, Section 4(c)]. We will evaluate all roads in existence at the time of wilderness designation in the unit's Comprehensive Conservation Plan or Wilderness Management Plan (WMP). We may convert roads within wilderness to trails for walking or nonmotorized, nonmechanized transportation or restore them to natural conditions. If we decide to restore a road, we allow regeneration by natural succession, if soil and climate conditions permit. If revegetation is necessary, we will use indigenous plant species.

C. Unpaved Trails. We may provide unpaved trails and trail bridges only where they are essential for resource protection or where significant safety hazards exist during normal use periods. We will design and locate trail improvements to fit into the wilderness landscape as unobtrusively as possible and construct them of native materials. We will determine the need for trail improvements and maintenance through minimum requirement analyses and include them in the WMP for the unit.

D. Motorized Vehicles, Motorized Equipment, and Mechanical Transport. We generally prohibit motorized vehicles and equipment and mechanical transport in wilderness areas [Wilderness Act, Section 4(c)]. We will not use or allow the use of motorized vehicles or equipment or mechanical transport in wilderness unless they are essential to administer the area as wilderness and accomplish refuge purposes, ensure public safety, or to conserve threatened or endangered species, as determined by a minimum requirement analysis. We will not use such equipment or transport for administrative convenience, economy of effort, or convenience to the public. The applicable provisions of ANILCA govern the use of motorized equipment by the public in wilderness areas in Alaska.

E. Public Access.

(1) Inholdings. We will provide adequate legal access to non-Federal land that is effectively surrounded by wilderness, using routes and modes of

travel causing the least impact to the wilderness area while allowing for the reasonable purposes for which we hold or visitors use the inholding (see ANILCA and 43 CFR 36 for provisions specific to Alaska). If alternate access is available through nonwilderness lands, we will not allow access through wilderness (other than access generally available to the public). We will pursue voluntary land exchanges, purchases, or donations to consolidate ownership where access to inholdings would be detrimental to wilderness character or values.

(2) Alaska. On wilderness lands in Alaska, we will permit the use of snowmobiles, motorboats (excluding airboats), fixed-wing aircraft, and nonmotorized surface transportation methods for access to traditional activities and for travel to and from villages and homesites, subject to reasonable regulations to protect the land's natural and other values (Sections 811 and 1110 of ANILCA and 50 CFR § 36.12). We will issue appropriate notice and hold public hearings on restrictions on these forms of access in the vicinity of the affected area. Such rights are subject to reasonable regulations to protect resource values.

(3) Access for People With Disabilities. The Americans With Disabilities Act of 1990 (Section 507(c), 104 Stat. 327, 42 U.S.C. 12207) reaffirms that nothing in the Wilderness Act prohibits wheelchair use in a wilderness area by an individual whose disability requires the use of a wheelchair. Consistent with the Wilderness Act, we are not required to provide any form of special treatment or accommodation, to construct any facilities, or to modify any conditions of lands within a wilderness area to facilitate such use. In meeting the goal of accessibility, we will ensure that we will afford persons with disabilities experiences and opportunities with other visitors to the greatest extent practicable. We will also work with commercial guides and outfitters to ensure they meet accessibility standards when offering services in refuge wilderness.

F. Commercial Uses. Sections 4(c) and 4(d)(5) of the Wilderness Act prohibit commercial enterprises or services in wilderness, unless such activities are ''necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.''

(1) Guiding and Outfitting. We may authorize wilderness-dependent commercial services, such as guiding and outfitting, if we determine that they are necessary for the public enjoyment of wilderness, provide opportunities for primitive and unconfined types of recreation, preserve the wilderness character of the land, are not in conflict with unit purposes, and are managed in concert with our policies (see 604 FW 2). We will ensure that commercial operators comply with established ''Leave No Trace'' protocols. We will allow only temporary structures and facilities necessary to support wilderness recreation. We prohibit the storing of permanent equipment and supply caches in wilderness areas by commercial operators. In Alaska, ANILCA authorizes the use of temporary campsites, tent platforms, shelters, and other temporary facilities related to the authorized taking of fish and wildlife if they are not detrimental to unit purposes or the wilderness character of the area. This includes temporary facilities used by guides, outfitters, commercial fishermen, and transporters. Permittees must construct, use, and maintain such facilities and equipment in a manner consistent with the protection of the wilderness character of the area, subject to provisions of ANILCA 1316 (b). Permittees must construct any new facilities with materials that blend with the landscape. We will manage such facilities through Special Use Permits.

(2) Grazing. We generally prohibit commercial livestock grazing in wilderness. We may permit livestock grazing in wilderness areas as a habitat management tool only when it is the minimum requirement to administer the area as wilderness [see 610 FW 2.9]. We prohibit the use of motorized vehicles, motorized equipment, or mechanical transport, except as provided for in 610 FW 2.8. For those wilderness areas where the establishing legislation permits continuation of an existing commercial livestock grazing program, grazing activity will not be curtailed or eliminated solely because the area is included in the wilderness system. In those instances, commercial livestock grazing programs will be managed to minimize impacts and to protect resource values.

(3) Photography and Filmmaking. We prohibit commercial filming and commercial photography in wilderness areas unless we determine it is necessary and proper for providing educational information about wilderness uses, resources or values, or other wilderness purposes. In cases where we allow commercial photography, we will manage it through an audiovisual productions permit. See 120 FW 1 and 2, 605 FW 5, and 43 CFR 5.1 for additional guidance.

G. Rights-of-Way. We will terminate or phase out granted or existing rights-of-way included in wilderness whenever possible. Where it is not possible, we may renew rights-of-way subject to our control only under conditions outlined in the refuge's WMP that protect wilderness character and resources and limit the use of motorized or mechanical equipment. We will not issue any new rights-of-way or expand any existing rights-of-way in wilderness, except in Alaska, as provided for under Title XI of ANILCA (see also 43 CFR 36).

H. Mineral Exploration and Development. We prohibit mineral exploration or development in wilderness, except where valid rights existed prior to wilderness designation. We should remove or extinguish mining claims and non-Federal mineral interests in wilderness through authorized processes including purchasing valid rights. We will not apply this policy to contravene or nullify valid rights vested in holders of mineral interest on our wilderness areas. All claimants must comply with reasonable conditions for the protection of wilderness values. Claimants must conduct mineral development or exploration activities without interfering with the administration of the wilderness or disturbing wildlife, or its habitat. Claimants must confine use and occupation of the area to the minimum necessary for conducting efficient mineral operations. Persons conducting mineral operations must comply with all applicable Federal and State laws and regulations. When claimants complete operations, they will restore the area to its previous condition, including removing all structures and equipment from the area.

(1) In Alaska, Section 1010 of ANILCA requires the Secretary to assess oil, gas, and other mineral potential on all public lands, including wilderness. The mineral assessment program may include, but is not limited to, techniques such as side-looking radar and core and test drilling but does not include exploratory drilling of oil and gas test wells. Any assessment activity must be determined to be compatible before it is permitted.

I. Geographic Naming in Wilderness. The attachment of official, permanent names to mountains and other natural features represents a human intention to influence and dominate how they are perceived—in a landscape that symbolically represents freedom from human influence and dominance. Since place names diminish this aspect of wilderness character, we will not propose to the U.S. Board of Geographic Names, nor support proposals by others, to apply names to geographic features within wilderness. We may name new

wilderness refuges and new wilderness areas within refuges, but we will neither propose nor support naming them after any person. See 040 FW 2 2.7 (C).

3.6 *How do we protect natural resources in wilderness?* A. Research. The scientific value of wilderness derives from its relatively undisturbed condition. Because such undisturbed natural areas increasingly are rare, wilderness areas often provide unique opportunities for scientific investigation. All persons associated with research in wilderness must know and understand the purposes, provisions, and values of wilderness. We will not allow or engage in research that significantly disrupts wilderness conditions or character.

(1) We may allow scientific research consistent with protecting wilderness character when:

(a) Suitable locations outside wilderness are not available;

(b) It furthers the management, scientific, and educational purposes of the area;

(c) The possible benefits outweigh the negative impacts on wilderness values; and

(d) It is carried out in a manner respectful of wilderness character and values.

(2) We will not allow the use of motorized equipment or vehicles, mechanical transport, structures, installations, or monitoring devices and methods, unless:

(a) Alternative methods are not available;

(b) They represent the minimum requirement;

(c) They are consistent with the unit's WMP; and

(d) They are compatible with the unit's purposes.

(3) We will evaluate research using a minimum requirement analysis. We must include research activities in the unit's WMP.

(a) We may use fixed-wing aircraft to conduct approved research and management surveys. We will allow the use of helicopters and the landing of aircraft only when supported by a minimum requirement analysis. However, we may immediately authorize aircraft or helicopter landings in emergencies related to health and safety. We should conduct our aircraft operations over wilderness areas at an altitude greater than 2,000 feet (600 m) above ground level whenever possible. We must be respectful of the area's wilderness character and minimize disturbance to wildlife and other users when using aircraft. We should consider time of day, season, route, and flight altitude when planning our activities.

(4) In Alaska: ANILCA authorizes motorized boats, snowmobiles, and the landing of fixed-wing aircraft for public access to wilderness (subject to reasonable regulations to protect the natural and other values of the unit.) We may use motorized boats, snowmobiles, and fixed-wing aircraft for access in Alaskan wilderness without conducting a minimum tool analysis. We select landing areas to avoid surface disturbance.

B. Inventory and Monitoring. Long-term wilderness management depends upon the inventory and monitoring of wilderness resources, including fish, wildlife, habitat, vegetation, air, water, archaeological resources, and public use. We should conduct baseline inventories for key wilderness resources and identify any threats to the wilderness area. Baseline data provides the frame of reference for the thresholds and indicators identified in the WMP that may trigger use limitations. Inventories also provide us with the information necessary to evaluate the effects of management actions, public uses, and external threats on wilderness resources. We should conduct inventories using a minimum requirement analysis and in accordance with 701 FW 2. We should include inventory and monitoring in the unit's WMP.

C. Habitat and Species Population Management. We manage refuge wilderness to maintain and restore the natural features and processes affecting the components of an area's ecological integrity: biological diversity, biological integrity, and environmental health. We manage refuge wilderness to maintain components of natural biological diversity such as wildlife populations with natural densities, social structures, and dynamics. Major ecosystem processes including wildfire, drought, flooding, windstorms, pest and disease outbreaks, and predator/prey fluctuations are natural ecological and evolutionary processes. We will not interfere with these processes or the wilderness ecosystem's response to such natural events. However, in some cases these processes may become unnatural, such as excess fuel loads from fire suppression activities, predator/prey relationships disrupted by the control of carnivores, or the invasion of alien species. In such cases, we encourage the restoration or maintenance of ecological integrity and wilderness character. All decisions to modify habitat, species levels, or natural processes by the methods or practices listed below must be necessary to accomplish the purposes of the refuge and the Wilderness Act; supported by a minimum requirement analysis; and documented in the WMP. Generally, we will modify habitat, species population levels, or natural ecological processes in refuge wilderness only when such actions: maintain or restore ecological integrity; correct or alleviate negative impacts to wilderness character caused by human influence; are necessary to protect or recover a threatened or endangered species; or address an emergency involving the health and safety of persons within or outside the wilderness.

(1) Fire. We may use fire in wilderness subject to the above criteria (see 610 FW 5 and 621 FW 1–3 for additional guidance).

(2) Grazing. We may permit livestock grazing in wilderness areas as a habitat management tool only when it is the minimum requirement to administer the area as wilderness and essential to accomplish refuge purposes.

(3) Transplanting, Reintroducing, or Stocking Fish and Wildlife. We will not transplant, introduce, or reintroduce any species into a wilderness area where they are not indigenous or into bodies of water that are naturally barren (see 601 FW 3). We will determine through consultation with the appropriate State agency which indigenous species we will use for stocking. We will use local genetic strains whenever possible. We will give preference to species extirpated by human-induced causes. We may continue to manage species traditionally stocked before wilderness designation only if they meet the criteria established above. We will not use fertilizers to artificially enhance fisheries or other wildlife resources.

(4) Control of Invasive Species, Pests, and Diseases Through Integrated Pest Management (IPM). Where invasive species pose a threat to the integrity of the wilderness ecosystem or where the lack of control would result in unacceptable impacts on other wilderness resources (including threatened or endangered species), we take steps to control them. Where pests and diseases pose a significant threat to the health of humans or wildlife as identified by the Centers for Disease Control, or where the lack of control would result in unacceptable impacts on other wilderness resources (including threatened or endangered species), we may take steps to control them. We will not control invasive species, pests, and diseases, including mosquitoes, for administrative convenience, economy of effort, or convenience to the public.

(5) We will use integrated pest management to prevent, control, or

eradicate alien species, pests, and diseases subject to the criteria listed above. We will determine appropriate IPM procedures through a minimum requirement analysis and document them in the WMP. If the approved IPM plan determines that chemical or biological applications are necessary, we will only use agents that have the least impact on nontarget species and on the wilderness environment in compliance with 7 RM 14.1–8 and 7 RM 8.6–8. We may make an exception to 610 FW 3.6 Cc for approved nonindigenous biological control agents. We will conduct invasive species, pest, and disease control in wilderness in a manner consistent with protecting wilderness character and values and only if compatible with refuge purposes.

(6) Predator Control. Predators are a natural and important component of the wilderness ecosystem and should be free from unregulated human interference. Rarely, predator control may be necessary for the protection of threatened or endangered species. In such cases, we may control predators subject to the above criteria and only when strong evidence exists that the proposed action will correct or alleviate the problem. We will direct control at the individual animal(s) causing the problem using the method least likely to harm nontarget species and wilderness visitors.

D. Air Quality Protection. Maintaining the wilderness character and values of an area requires proper management of air resources.

(1) Clean Air Act (CAA). Congress passed the CAA to protect both human health and the environment and provide protection of air quality in wilderness areas by means of national standards for air quality and the Prevention of Significant Deterioration (PSD) program (see also 561 FW 2.1). The PSD program designated 21 of our wilderness areas as mandatory Class I air quality areas, including all wilderness areas over 5,000 acres (2,000 ha) in existence on August 7, 1977. The CAA gives Class I areas the highest level of protection from air pollutants. The CAA designates and protects other wilderness and nonwilderness areas as ''Class II,'' but not to the extent of Class I areas. The CAA charges the Federal Land Manager (the Assistant Secretary of the Interior for Fish and Wildlife and Parks) and the Service with an ''affirmative responsibility'' to protect the air quality related values of Class I lands. Air pollution, including visibility, wildlife, vegetation, soil, water, and geological and cultural resources may adversely affect air quality related values (ARQV). We will identify the ARQV of each wilderness area and evaluate their sensitivity to air pollution in the WMP.

(2) Visibility. The CAA grants special protection to visibility in Class I areas. The CAA establishes a national goal of remedying any existing and preventing any future, human-caused visibility impairment in mandatory Class I areas. The Environmental Protection Agency (EPA) established the Regional Haze regulations as part of their strategy to meet this goal, requiring the States to make ''reasonable progress'' towards natural visibility conditions. We will work with the EPA and the States to identify natural visibility conditions and set reasonable progress goals for visibility improvement in Class I areas. We may conduct monitoring with samplers sited on adjacent nonwilderness land to characterize current visibility and air quality conditions in wilderness areas.

(3) External Pollution Sources. Sources outside the wilderness, including powerplants, industries, and automobiles, are the usual cause of air pollution in wilderness areas. To ensure the protection of ARQV from these external sources, we will participate in State and local planning and permitting processes, including the review of air pollution permit applications for major new sources or modifications of existing sources of air pollution. We will also review the National Environmental Policy Act documents for projects with the potential to affect wilderness areas. In consultation with the EPA, State, or local agencies, we will determine whether air pollutant emissions from a proposed action will adversely affect air quality-related wilderness values and work to minimize or eliminate such adverse impacts.

(4) Internal Pollution Sources. Emissions also can come from sources within wilderness areas, notably fire. We may use fire as a tool to restore and maintain healthy wilderness ecosystems. However, we must balance the use of fire with our responsibility to protect visibility and other ARQV in Class I areas and wilderness (see 610 FW 5, and 621 FW 1–3 for additional guidance).

3.7 *How do we protect cultural resources in wilderness?* Cultural resources, such as archaeological sites, historic trails and structures, and sacred sites are unique and nonrenewable parts of the wilderness resource. We follow policy and standards for identifying, evaluating, protecting, and managing cultural resources in the FWS Manual, Part 614 FW 1–5.

A. Burial and Sacred Sites. We may maintain burial sites or cemeteries located within a wilderness area, but we prohibit new interments unless authorized by Federal statute, existing reservations, or retained rights. We will identify and protect Native American sacred sites or religious areas. We will allow Native American practitioners access to these sites within wilderness areas for religious and traditional ceremonial purposes in accordance with wilderness access regulations and procedures and the Service's sacred sites protection policy.

(1) We will notify and consult appropriate tribal leaders as early as possible in planning for wilderness management decisions that may affect sacred sites and practice of Native American religion. The American Indian Religious Freedom Act of 1978, 42 U.S.C. 1996 and 1996a; Executive Order 13007, ''Protection of Sacred Sites;'' and Service policy mandates this consultation. We must coordinate consultation through the Regional Historic Preservation Officer and Regional Native American Liaison.

B. Research. We will encourage archeological research employing noninvasive and nondestructive survey and inventory methods. The Refuge Manager and the Regional Historic Preservation Officer will review proposals for archeological research. The Regional Director approves or denies archaeological research permits based upon the recommendation of the Refuge Manager and regional archeologist. We will only approve archeological research requiring digs, trenching, or other forms of excavation in wilderness when required to protect a threatened resource or when the applicant can demonstrate the need for important data. Such research is subject to a minimum requirement analysis.

C. Historic Buildings and Structures. We will comply with cultural resource management requirements and policies when maintaining, using, or removing historic buildings and structures and will support our decisions with a minimum requirement analysis. We must consult with the Regional Historic Preservation Officer and adhere to the requirements covered by Sections 106 and 110 of the National Historic Preservation Act, and the regulations in 36 CFR 800, for any work affecting historic buildings and structures. The Regional Preservation Officer is responsible for determining if such properties are listed in or eligible for the National Register of Historic Places and for performing consultation with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Places. For buildings and structures that are eligible for or listed in the National Register, and which we

choose to use or maintain, we will follow the minimum requirement policy and the Secretary of the Interior Standards for the Treatment of Historic Properties. See 610 FW 3.5.A above for additional information regarding structures and installations.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 4 Public Use Management

610 FW 4.1

4.1 *What is the purpose of this chapter?* This chapter provides specific direction and guidance on managing public use in wilderness. You can find additional guidance for general public use management in Appropriate Uses 603 FW 1 and Priority Wildlife-Dependent Recreation 605 FW 1.

4.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

4.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management, are contained in 610 FW 1.3.

4.4 *What are our general public use guidelines for wilderness?* We will provide opportunities for compatible use and enjoyment of wilderness areas in a manner that will preserve their wilderness character and that will ''leave them unimpaired for future use and enjoyment as wilderness'' [The Wilderness Act: Sec 2 (a)]. We may prescribe appropriate conditions or restrictions upon any authorized activity as necessary to preserve wilderness resources and character.

A. We will emphasize providing ''opportunities for solitude or a primitive and unconfined type of recreation'' [The Wilderness Act: Sec. 2 (c)]. Visitors whose experience depends on wilderness conditions have the fewest number of settings to accommodate their use, while those whose use is not dependent on wilderness conditions have a greater range of alternatives. Where use conflicts occur, or when we must limit the number of visitors, we will give preference to those uses most dependent on wilderness conditions. Uses that are both wildlife and wilderness-dependent will receive highest priority.

B. Priority for public uses on wilderness portions of a refuge are:

(1) Compatible, wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) practiced so as to preserve wilderness character; and

(2) Other compatible and appropriate, wilderness-dependent recreation.

4.5 *What are appropriate recreational uses in wilderness?* Where compatible, the priority public uses of the System (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are appropriate in refuge wilderness. In refuge wilderness, these uses are nonmotorized activities which involve no mechanical transport.

A. Other forms of wilderness-dependent recreational activities, such as hiking, canoeing, or crosscountry skiing, allow visitors to experience and observe wildlife and its habitat in a wilderness context. These activities provide opportunities to experience the physical, psychological, symbolic, and spiritual values of wilderness under conditions that include risk and challenge that rewards self-reliance and a spirit of exploration with discovery and adventure. Such wilderness-dependent recreation may be appropriate in refuge wildernesses when we determine it to be compatible with the refuge purposes and when it does not conflict with the priority public uses of the System or other policies for managing public uses of the System.

4.6 *What activities have we identified to prohibit or otherwise specifically regulate in wilderness areas?* A. The Wilderness Act defines prohibited uses in Sec. 4. (c).

B. Extreme and Thrill Sports. We prohibit the various forms of hang gliding and other recently developed thrill-oriented activities that do not depend on a wilderness setting.

C. Grazing Packstock. We may authorize noncommercial grazing of trail stock incidental to recreational use of wilderness in accordance with the conditions, outlined in the Wilderness Management Plan (WMP), that ensure protection of wilderness resources such as requiring that ''weed free and weed-seed free'' supplemental feed accompany all overnight use of pack animals, or prohibiting certain types of feed which could introduce invasive species.

D. Competitive Events. We prohibit competitive events that are not consistent with wilderness character, that may intrude on solitude, or are not dependent on a wilderness setting. Prohibited events include animal, foot, or watercraft races, endurance contests, competitive trail rides, organized survival exercises, and war games. We may make exceptions for preexisting and historically significant events, like the Iditarod sled dog race in Alaska, as long they do not degrade wilderness resources.

E. Flightseeing. Aerial sightseeing, aerial wildlife viewing, and aerial photography (collectively referred to as ''flightseeing'') are activities at variance with the purpose of wilderness and often result in unacceptable wildlife disturbance. Although we lack jurisdiction over airspace, we will not encourage flightseeing and will work with the Federal Aviation Administration to encourage pilots to conduct overflights above 2,000 feet (600 m) above ground level. We will enforce provisions of the Airborne Hunting Act that prohibit harassment of wildlife by aircraft. Wilderness administrators should monitor and document low-level aircraft activity.

F. Other Public Uses. We will manage other public uses not specifically mentioned above in accordance with Service wilderness, compatibility, appropriate refuge uses and wildlife-dependent recreation policies and the National Wildlife Refuge System Administration Act, as amended. In Alaska, ANILCA covers subsistence use, and we address it in 610 FW 2.17.

G. Alaska. In Alaska, the public may continue to use previously existing public use cabins. We may construct, maintain, or replace public use cabins subject to restrictions necessary to preserve the area's wilderness character. ANILCA Section 1315(d) requires the Secretary to notify the House and the Senate authorizing committees of our intention to remove an existing or construct a new public use cabin or shelter in wilderness.

(1) The use of temporary campsites, tent platforms, shelters, other temporary facilities and equipment directly related to the taking of fish and wildlife may continue. We must construct new facilities of materials that blend and are compatible with the surrounding landscape. However, ANILCA Section 1316(b) provides that we may, after adequate notice, deny establishment and use of new facilities for these activities if we determine them to be a significant expansion of existing facilities or uses which would be detrimental to the unit's purposes, including wilderness values.

4.7 *How can we best preserve a quality wilderness experience and the wilderness itself?* We should maximize the visitor's autonomy and isolation from the influences of the mechanized and settled outside world. Management actions, necessary facilities, and on-site presence shall be as unobtrusive and subtle as possible, consistent with the overriding criteria of maintaining wilderness condition and character. We generally prefer information and education over direct management approaches such as regimentation and regulation. However, permit systems, group size limitations, and other rules may be necessary to ensure protection of both the wilderness experience and wilderness resource. The WMP will evaluate the fragility of wilderness resources, estimate expected visitation and potential impacts, establish monitoring methods, describe desired conditions, and provide indicators that will trigger action to prevent impacts. For instance, the refuge should identify specific areas essential to wildlife species sensitive to human disturbances and initiate visitor-use controls in critical areas or during critical periods of the year when necessary.

4.8 *How should we manage for solitude?* We should strive to minimize the presence of modern artifacts of civilization, such as signs, bridges, facilities, and technology; large groups; and conflicting uses that tend to interfere with one's free and independent response to nature. We should employ survey methods to evaluate visitor experiences related to solitude and correct deficiencies where we have ability to improve that experience.

4.9 *How do we manage for visitor safety in wilderness?* The wilderness visitor has an increased responsibility for their own safety in wilderness areas. Where the wild has not been taken out of the wilderness, there are risks. We will not modify wilderness areas to eliminate risks normally associated with wilderness travel. We should provide visitors general information about the unpredictable nature of risks inherent in wilderness, including potential dangers related to isolation, terrain, water, wildlife, and weather. We should provide site-specific information with caution to avoid the implication that we have identified all potential hazards. Information on risks and recommended precautions will emphasize that safety is the visitor's responsibility and that the freedom, independence, and self-reliance of the wilderness experience requires proper mental, physical, and material preparation. We must remain prepared to respond appropriately to emergencies related to public safety, including conducting or assisting State or local agencies with search and rescue functions. However, we must not convey the impression that assistance is readily available in all situations.

4.10 *How do we inform and educate the public about wilderness?* Each refuge containing a wilderness area should develop an information and education program designed to increase awareness and appreciation of the full spectrum of wilderness values, without stimulating unacceptable demand for use. The program should focus on providing information that enhances the experience, describes the limitations of wilderness to accommodate use, encourages visitors to practice Leave-No-Trace (LNT) techniques, properly prepares potential visitors for wilderness challenges, and generally stimulates cultivation of a personal ethic based on a willingness to exercise self-restraint in the interest of other users and future generations. Implementation of thoughtful information materials and interpretive programs can be the most effective tool for protecting the wilderness. Where appropriate, we also should produce brochures and other interpretive and information materials for the non-visiting public who may want to learn about wilderness and simply finds pleasure in just knowing that it is there. Development of information and educational materials should be guided by the *Primary Interpretive Themes for Wilderness Education* adopted by the Service (Exhibit 7 Interpretive Themes), FWS Publications Guidelines, Environmental Education Policy (605 FW 6), and Interpretation Policy (605 FW 7). Wilderness education curriculum materials are available through the Arthur Carhart National Wilderness Training Center; and Leave No Trace (LNT) curriculum materials, skills and ethics guides, and training are available through LNT, Inc. We strongly influence public education and wilderness ethic formation by the way we conduct our business in the wilderness. We must always be aware of the message our activities convey about appropriate wilderness behavior, norms, and attitudes.

4.11 *How do we implement the Leave No Trace program?* A. The LNT program promotes and inspires responsible outdoor recreation through education, research, and partnerships. LNT, Inc., a nonprofit organization, manages the program. The National Outdoor Leadership School (NOLS) maintains the educational component of LNT. The four Federal wilderness management agencies have adopted the LNT program through a Memorandum of Understanding (Exhibit 6, LNT Memorandum of Understanding) as our standard regarding minimum impact practices for both the public and ourselves.

B. We apply LNT principles and practices to all forms of recreation management within wilderness, including commercial operations. As an educational program, the LNT program offers managers a tool for dealing with issues and impacts. We should limit interpretation of wilderness to off-site locations, except as needed to protect visitor health and safety or to protect the wilderness resource. However, we may conduct educational programs, such as LNT training or interpretative walks, inside the wilderness area when deemed appropriate to help foster a better understanding and appreciation of wilderness. Such programs should remain sensitive to the wilderness resource, wilderness character, and the experience of other users.

4.12 *How do we monitor public use in wilderness?* A. We will monitor those conditions and long-term trends of wilderness resources that are necessary to identify the effects of both public activities and management actions and the need for corrective actions. We will monitor to ensure that our actions and visitor impacts on wilderness resources and character do not exceed standards and conditions established in an approved WMP. As appropriate, wilderness monitoring programs may assess physical, biological, and cultural resources, social/psychological conditions, and wilderness user demographics. Monitoring programs may also need to assess the effect of actions that originate outside the wilderness in order to determine the nature, magnitude, and probable source of those impacts.

B. Limits of Acceptable Change (LAC) is one framework designed for establishing indicators, standards, and desired conditions. While we commonly use LAC to manage recreational use of wilderness, the concept applies to any factor that can influence or change desired conditions, including fire, grazing, mining, or impacts on air quality. [See Hendee, Stankey, and Lucas (1990) in Exhibit 8 References.] We discuss other means of monitoring visitor impacts in Priority Wildlife Dependent Recreation 605 FW 1–7 and will describe them in the refuge's approved CCP, WMP, or Public Use Plan.

4.13 *Do we allow public use structures and facilities in wilderness?* We prohibit permanent structures and facilities in wilderness unless they are:

A. The minimum requirement necessary to administer the area for the purposes of the Wilderness Act and accomplish refuge purposes;

B. Essential to protect the health and safety of visitors; or

C. Listed or eligible for listing in the National Register of Historic Places [See 610 FW 3.7C].

D. Bridges. We will select bridge locations to minimize their size and complexity. We must construct them of native or native-appearing materials that blend with the environment. We must also construct them according to our construction standards and maintain them for safety.

E. Campsites. Campsites may include a site marker, fire rings, tent sites, animal-resistant food-storage devices and primitive toilets when we need these facilities to protect wilderness resources or human health and safety. We may provide bear-resistant food containers in locations where bear encounters are likely. We place toilets only in locations where their presence will resolve health and sanitation problems or prevent serious resource impacts, especially where reducing or dispersing visitor use is impractical or has failed to alleviate the problem. We encourage the use of cooking stoves. We do not provide picnic tables in wilderness. We will consult the LNT Outdoor Skill and Ethics Guide appropriate for each wilderness habitat to determine the best campfire policy. If we allow campfires and the use of fuel wood from within the wilderness as authorized in a WMP, we will limit wood cutting to dead and down material.

F. Hunting and Photography Blinds. We may allow the use of simple screens made of dead and down natural material found in the locale, if the user dismantles them at the end of each use period. The user must carry in and out commercially built, artificial blinds. We prohibit permanent blinds.

G. Signs. We may use signs only if they meet the criteria listed above (4.13 A–C), to identify routes and distances. We will not use signs to mark streams, lakes, mountains, or other points of interest. Signs will be compatible with their surroundings and the minimum size. In waterways, signs will meet all Coast Guard or appropriate State requirements. We may also use signs to mark wilderness boundaries.

H. Trails and Trail Structure Maintenance. We should include an inventory of the wilderness trail system as an integral part of the wilderness management plan. We will maintain trails at levels and conditions identified within the plan. We will administer historic trails according to approved cultural resource plan requirements.

4.14 *How do we address special needs for persons with disabilities in wilderness?* A. Nothing in the Wilderness Act prohibits the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair. No agency must provide any form of special treatment or accommodation, or construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use. (Americans with Disabilities Act of 1990 (ADA): Section 507(c), 104 Stat. 327, 42 U.S.C. 12207).

B. The Service has legal obligations to make available equal opportunities for people with disabilities in all of our programs and activities. This requirement includes the opportunity to participate in wilderness experiences. Management decisions responding to requests for special consideration to provide for wilderness use by persons with disabilities must be in accord with the Architectural Barriers Act of 1968, the Rehabilitation Act of 1973 (amended in 1978) and Section 507(c) of the Americans with Disabilities Act of 1990. Such decisions should balance the intent of the access and wilderness laws and find a way to provide the highest level of access for the disabled with the lowest level of impact on the wilderness resource.

C. The Secretary of the Interior's regulations regarding ''Nondiscrimination in Federally Assisted Programs in the Department of the Interior'' (43 CFR part 17) require that the Service will operate all programs and activities so that they are accessible to and usable by persons with disabilities to the greatest extent practicable. However, 43 CFR 17.550 does not require agencies to take any actions or provide access that would result in a fundamental alteration in the nature of a program or activity. The agency subsequently has the burden of proving that compliance would result in a fundamental alteration.

D. While the Service is not required to provide any special treatment to provide access for persons with disabilities who use wheelchairs, managers should explore solutions for reasonable accommodations when not in conflict with the Wilderness Act (e.g., barrier-free trails, accessible campsites). Any facilities, built or altered, must meet current accessibility guidelines.

E. We allow wheelchairs in wilderness if they meet the definition in the ADA. The intent of this definition is that a wheelchair is a person's primary mode of locomotion, manual or electric, that is suitable for use in indoor pedestrian areas. This definition will also ensure that we reasonably accommodate persons using wheelchairs in wilderness without compromising the wilderness resource and its character.

F. A publication entitled ''Wilderness Access Decision Tool'' (available from the Arthur Carhart National Wilderness Training Center) provides further guidance in assisting managers in making appropriate, objective, and consistent decisions regarding the use of wilderness areas by persons with disabilities.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 5 Fire Management

610 FW 5.1

5.1 *What is the purpose of this chapter?* This Chapter establishes policy for fire management in wilderness areas.

5.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

5.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management, are contained in 610 FW 1.3.

5.4 *What is our general policy for managing wilderness fires?* All fires on our wildlands, including wilderness areas, are either wildland or prescribed fires. Wildland fires and their effects are inherent parts of the ecological and evolutionary processes of wilderness. We will not interfere with the wilderness ecosystem's recovery response to these effects. We manage prescribed and wildland fires to achieve wilderness objectives included in an approved Fire Management Plan (FMP). We will appropriately respond to all wildland fires in accordance with the minimum requirement concept (610 FW 2). We must identify and address wilderness character and values to be protected, desired fire regime, and specific fire management considerations in the Wilderness Management Plan.

A. Firefighter and public safety is always the first priority on all wildland fire operations. The Manual chapter on

Fire Management (621 FW 1–3) contains specific guidance on fire management policy, fire management plans, and prescribed burning. The chapter on Emergency Operations (095 FW 3) contains policy on wildland fire suppression. The Fire Management Handbook contains detailed guidance on FMP development.

B. We will conduct fire management planning, preparedness, wildland and prescribed fire operations, monitoring, and research on an interagency basis with the involvement of all partners.

5.5 *How do we manage wildland fire?* A. The principal wildland fire use objective in wilderness is to allow fire to play its natural role in the ecosystem. We may use wildland fire to achieve resource objectives as long as we include prescriptive criteria for wildland fire use in an approved FMP.

B. If we decide to suppress the fire, we determine the appropriate management response by selecting the least-cost options for suppression that also preserve the wilderness character and values. Firefighter safety and the minimum requirement concept will be the guiding factors in determining the appropriate suppression response and strategy. We will identify the appropriate minimum impact suppression standards in the FMP and develop them in conjunction with the fire management officer.

5.6 *How do we manage prescribed fire?* A. We may use prescribed fire within the wilderness area to fulfill unit purposes and the System mission and goals where fire is a natural part of the ecosystem only if it:

(1) Corrects or alleviates adverse impacts to the wilderness character and ecological integrity caused by human influence; or

(2) Is necessary to protect or recover a threatened or endangered species; and

(3) Is supported by a minimum requirements analysis.

B. We must include prescribed fire use within the wilderness in an approved FMP, and we must develop a Prescribed Fire Plan for any prescribed fire. We will append the FMP to the Wilderness Management Plan.

C. We should plan prescribed fire to minimize impacts on visibility during periods of heavy visitor use as well as to avoid adverse effects on other air-quality-related values.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 6 Wilderness Management Planning

610 FW 6.1

6.1 *What is the purpose of this chapter?* This chapter provides guidance on developing Wilderness Management Plans.

6.2 *To what does this chapter apply?* This chapter applies to Congressionally designated wilderness. Where this management guidance conflicts with provisions of legislation establishing wilderness on refuges, (including the Alaska National Interest Lands Conservation Act (ANILCA) in Alaska), the provisions of the legislation establishing wilderness take precedence. (See Exhibit 1; National Wildlife Refuge System Designated Wilderness Areas).

6.3 *What are the authorities that directly affect wilderness management on our lands?* Our authorities to manage wilderness, or those which may affect wilderness management, are contained in 610 FW 1.3.

6.4 *What is a Wilderness Management Plan (WMP)?* The WMP guides the preservation, management, and use of a particular designated wilderness. The WMP describes goals, objectives, and management strategies for the wilderness area based on the refuge or unit's purpose(s), System mission, and wilderness management principles. It contains specific, measurable management objectives that address the preservation of wilderness-dependent cultural and natural resource values and conditions. The WMP must clearly show the strategies and actions we will use and implement to preserve the wilderness resource, and the linkage between those strategies and actions and the wilderness objectives. It also contains indicators, standards, conditions, or thresholds that define adverse impacts on the wilderness character and values and will trigger management actions to reduce or prevent them. We will develop WMPs in coordination with State wildlife agencies and with public involvement.

6.5 *How does the WMP relate to the Comprehensive Conservation Plan (CCP)?* The WMP is a form of step-down management plan (602 FW 1.6 and 602 FW 4). The WMP provides detailed strategies and implementation schedules for meeting the broader wilderness goals and objectives identified in the CCP. WMPs are developed following the planning process guidance in 602 FW 1 and 602 FW 3 (602 FW 4).

6.6 *Does every wilderness area need a WMP?* We will describe the management direction for each designated wilderness either in a WMP or as part of a CCP (602 FW 3). We should address each wilderness as a separate management area.

6.7 *What should a WMP contain?* The WMP should include, at a minimum (see Exhibit 9 for further guidance):

A. Management direction in accordance with the refuge purposes, the Wilderness Act of 1964, specific wilderness-establishing legislation, System mission, and ANILCA, as applicable.

B. Goals and objectives for the wilderness area and their relationship to the refuge's purposes and objectives, and System mission, goals, and objectives. We derive wilderness objectives from applicable laws, including the Wilderness Act, legislation establishing the wilderness, purpose(s) for which the unit was established, applicable Service goals, and continental, national, and regional plans.

C. A description of the current or baseline situation of the wilderness resource, including a description of the wilderness area, natural conditions, management activities, existing facilities, and public use levels and activities. The plan also establishes indicators of change in resource conditions; standards for measuring that change; and desired conditions, or thresholds, that will trigger management actions to reduce or prevent impacts on the wilderness. Limits of Acceptable Change (LAC) is one framework designed for establishing indicators, standards, and desired conditions. While LAC commonly is used to manage recreational use of wilderness, the concept applies to any factor that can influence or change desired conditions, including fire, livestock grazing, mining, or impacts on air quality and related values. (See Hendee, Stankey, and Lucas (1990) in Exhibit 8 References).

D. A description of management actions (administrative, natural and cultural resources, public recreation, and interpretation and education) and a schedule of implementation, including funding and staff required to adequately administer the area. The implementation schedule will include a list of specific actions needed to accomplish WMP objectives, general prioritization of the action items, and target dates for completion.

E. Research needs and monitoring requirements to determine whether we are meeting our wilderness management objectives.

F. Procedures for determining and documenting the minimum requirement for administrative actions we will take in wilderness that might require a generally prohibited use and all minimum requirement analyses.

G. Descriptions of how we are to administer valid existing rights and congressionally authorized uses to provide protection to wilderness values.

H. An explanation of how we will coordinate, as much as possible, with adjoining wilderness units so that visitors traveling from one wilderness to another can do so with minimal impediments. Examples include the criteria for issuance of permits, riding and packstock use programs, and group and party sizes.

I. A legal description and map depicting the legal description.

J. An approval page signed by the Regional Director.

6.8 *How will we involve the public in wilderness management planning?* We will provide opportunities for meaningful public involvement as we develop management guidance for our wilderness areas. Public involvement is required in preparation of both CCPs and step-down management plans (602 FW 3 and 602 FW 4.2). Public involvement is also a requirement of the procedural provisions of the National Environmental Policy Act (NEPA). We will develop a public involvement plan to identify the most appropriate means and methods to ensure meaningful public involvement in wilderness management planning. Methods may vary depending on the particular situation (see 110 FW 1, Public Participation).

6.9 *How will we manage wilderness areas without an approved WMP?* During WMP development, the wilderness management policy (610 FW 1–7) and the refuge CCP will guide the conduct of day-to-day activities.

6.10 *May we implement a WMP completed prior to development of the refuge CCP?* We may implement an individual WMP completed prior to the development of the unit's CCP if the WMP:

A. Is current and approved; and

B. Was prepared in accordance with the NEPA process including appropriate public involvement.

6.11 *How frequently should we revise WMPs?* We review the WMP during routine unit programmatic evaluations. We will review and revise WMPs (if necessary) by the refuge staff concurrently with the CCP at least every 15 years, but we should review them every 5 years. We revise WMPs when significant changes to assumptions and conditions warrant it, including natural catastrophes, legal requirements, or environmental conditions. Revision of wilderness management direction requires appropriate public involvement and conformance with NEPA.

6.12 *How do we develop WMPs if our wilderness adjoins wilderness of another Federal agency?* When a Service wilderness area adjoins lands administered by another Federal agency, we coordinate the wilderness area management planning, including public involvement, with the neighboring agency. We develop joint management plans with all involved agencies, if at all possible.

Fish and Wildlife Service

Wilderness Stewardship

Part 610

Chapter 7 Wilderness Review and Evaluation

610 FW 7.1

7.1 *What is the purpose of this chapter?* This chapter establishes policy for conducting wilderness reviews nationwide. It also establishes policy for managing Wilderness Study Areas (WSAs).

7.2 *To what does this chapter apply?* This chapter applies to all lands of the National Wildlife Refuge System (System) that are subject to wilderness review and not currently designated wilderness. If any provisions in this policy conflict with the provisions of Alaska National Interest Lands Conservation Act (ANILCA), the provisions of ANILCA will prevail for refuges in Alaska.

7.3 *What are the authorities that directly affect wilderness reviews and management of WSAs on our lands?* We review lands for wilderness suitability and manage WSAs consistent with the authorities listed in 602 FW 1.3.

7.4 *What is a wilderness review?* We conduct wilderness reviews in accordance with the Comprehensive Planning Process (CCP) outlined in 602 FW 3. The wilderness review process is conducted in three phases: inventory, study, and recommendation. We identify lands and waters that meet the minimum criteria for wilderness in the inventory phase of the review. We evaluate the resulting WSAs in the study to determine if they merit recommendation from the Director to the Secretary for inclusion in the National Wilderness Preservation System.

7.5 *When should we conduct a wilderness review?* Consistent with the planning guidance, we may conduct a wilderness review any time that significant new information becomes available or when we identify the need to do so. At a minimum, we will conduct wilderness reviews every 15 years through the CCP process. We generally conduct wilderness reviews within 2 years of acquiring acreage (for a new refuge or an expansion) that may qualify as wilderness. A review would be appropriate when we have restored significant acreage to its natural conditions sufficiently that it meets the definition of wilderness. In addition, Congress may direct the study of specific areas and provide other guidance on wilderness evaluations through legislation.

7.6 *How do wilderness reviews relate to acquisition planning?* When we inventory lands and resources of a proposed new refuge or expansion area during the land acquisition planning process and identify management problems, needs, and opportunities, we will also include a preliminary inventory of the wilderness resource (see 602 FW 1.7.C). We discuss potentially suitable areas in the Land Protection Plan and associated NEPA document.

7.7 *Can we conduct a wilderness review outside of the scheduled Comprehensive Conservation Planning or acquisition planning processes?* Yes. At any time before or after we have developed a CCP, if additional information becomes available, if we have acquired additional lands, or if restoration activities have significantly modified System lands, we may conduct a wilderness review. The review will be conducted following the process described in 602 FW 3 including public involvement and NEPA compliance. Existing CCPs should be revised or amended to incorporate the results of wilderness reviews [602 FW 3.4 C (8)].

7.8 *How do we identify WSAs in the wilderness inventory?* We inventory System lands and waters to identify areas that meet the definition of wilderness as defined in Section 2(c) of the Wilderness Act.

> A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural

conditions, and which: (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic, or historical value.''

Areas that meet the above criteria are identified as WSAs.

7.9 *How do we evaluate the size criteria for wilderness?* Determine if the area ''* * * has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition''. The Wilderness Act does not specify a minimum size for roadless islands. The size criteria will be satisfied for areas under Service jurisdiction in the following situations:

A. An area with over 5,000 contiguous acres (2,000 ha). State and private land inholdings are not included in making this acreage determination.

B. A roadless island of any size. Refer to 610 FW 1.6 for a definition of roadless island.

C. An area of less than 5,000 contiguous acres that is of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management.

D. An area of less than 5,000 contiguous acres that is contiguous with a designated wilderness, recommended wilderness, or area of other Federal lands under wilderness review by the U.S. Forest Service (USFS), Bureau of Land Management (BLM), or National Park Service (NPS).

7.10 *How do we evaluate the naturalness criteria for wilderness?* Determine if the area or island ''* * * generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable.'' To make this determination, it must be possible to observe the area as being generally natural. It must appear to have been affected primarily by the forces of nature, and people's work must be substantially unnoticeable. It must retain its ''primeval character.''

A. We make a distinction between an area's ''apparent naturalness'' and ''natural conditions'' in the context of our ecological integrity policy. Natural conditions refers to the presence or absence of ecosystems that existed prior to European settlement and the advent of the industrial era. Apparent naturalness refers to whether or not an area looks natural to the average visitor who is not familiar with natural conditions versus human-affected ecosystems in a given area. The presence or absence of apparent naturalness (i.e., do the works of humans appear to be substantially unnoticeable to the average visitor?) is the question to be addressed in the inventory phase of the wilderness review. An assessment of an area's existing levels of ecological integrity is an appropriate consideration in the study phase of the wilderness review.

B. We will avoid an overly pure approach to assessing naturalness. Congress did not intend to limit wilderness designation to only those areas judged pristine. Land that was once logged, used for agriculture, or otherwise significantly altered by humans may be eligible for wilderness designation if it has been restored, or is in the process of being restored, to a substantially natural appearance.

C. We will use caution in assessing the effects on naturalness that relatively minor human impacts create. An area may include some human impacts provided they are substantially unnoticeable in the unit as a whole. The presence of the following types of impacts in an area being inventoried for wilderness character should not result in a conclusion that the entire area lacks naturalness. Examples of man-made features that would not disqualify an area for consideration as a WSA include: trails, trail signs, bridges, fire towers, fire breaks, fire presuppression facilities, pit toilets, fisheries enhancement facilities (such as fish traps and stream barriers), fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, research monitoring markers and devices, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, spring developments, and small reservoirs.

D. Significant man-caused hazards, when considered unsafe for public use, such as the existence of unexploded bombs and shells from military activity or contaminated sites would probably disqualify the affected portions of an area from consideration pending completion of remediation and restoration activities.

E. We will not disqualify areas from further wilderness study solely on the basis of the ''sights and sounds'' of civilization located outside the areas. Human impacts outside the area being inventoried will not normally be considered in assessing naturalness. However, if an outside impact of major significance exists, it should be noted and evaluated in the inventory conclusions. Human impacts outside the area should not automatically lead to a conclusion that an area lacks wilderness characteristics.

F. We will not disqualify areas from further wilderness study solely on the basis of established or proposed management practices that require the use of temporary roads, motor vehicles, motorized equipment, motorboats, mechanical transport, landing of aircraft, structures, and installations generally prohibited in designated wilderness (see definition of ''generally prohibited use'' in 610 FW1.6). The physical impacts of these practices should be the focus of the naturalness evaluation. Administrative and management needs are appropriate for consideration in the study phase of the wilderness review.

7.11 *How do we evaluate outstanding opportunities for solitude or a primitive and unconfined type of recreation?* The word ''or'' in this sentence means that an area only has to possess one or the other. It does not have to possess outstanding opportunities for both elements and does not need to have outstanding opportunities on every acre. There must be outstanding opportunities somewhere in the unit.

A. The Wilderness Act does not specify what was intended by ''solitude or a primitive and unconfined type of recreation.'' In most cases, the two opportunities could be expected to go hand-in-hand. However, the outstanding opportunity for solitude may be present in an area offering only limited primitive recreation potential. Conversely, an area may be so attractive for recreation use that it would be difficult to maintain opportunity for solitude (e.g. around water).

B. We will assess each inventory area on its own merits as to whether an outstanding opportunity exists; there must be no comparison among areas. It is not permissible to use any type of rating system or scale—whether numerical, alphabetical, or qualitative (i.e., high-medium-low)—in making the assessment.

C. When an area is contiguous to designated wilderness, recommended wilderness, or an area of other Federal lands (*i.e.* USFS, BLM, or NPS) already determined to have wilderness character, no additional evaluation of outstanding opportunities is required.

7.12 *Must an area contain ecological, geological, or other features of scientific, educational, scenic, or historic value to qualify as a WSA?* These values are not required for wilderness but their presence should be documented where they exist.

7.13 *What do we consider in the wilderness study?* We study each WSA identified in the inventory to analyze all values (*e.g.,* ecological, recreational, cultural, economic, symbolic); resources (*e.g.,* wildlife, water, vegetation, minerals, soils); public uses; and management within the area. We conduct wilderness studies following the procedures outlined in the refuge planning policy (602 FW 3). These procedures ensure public involvement and compliance with NEPA.

A. An All Wilderness Alternative and a No Wilderness Alternative will be evaluated for each WSA. Partial Wilderness Alternatives may be developed to minimize resource conflicts or improve the capability of managing the area as wilderness. The environmental analysis will address benefits and impacts to wilderness values and other resources under each of the alternatives. The study will evaluate how each alternative will achieve the goals of the NWPS. The study will also evaluate how each alternative will affect achieving refuge or planning unit purpose(s); help fulfill the System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the System; and meet other mandates.

B. The findings of the study determine whether we will recommend the area for designation as wilderness. The information, analysis, and decisions in the CCP provide the basis for wilderness proposals. The Director must concur with wilderness study conclusions prior to publication of the draft CCP/environmental impact statement (EIS). The study provides data so that we can defend our conclusions, and serves as the basic source of information throughout the public, executive, and legislative review processes that follow.

C. When the findings of the wilderness study result in a proposal for wilderness recommendation, we will give public notice of the proposal; hold a public hearing; and advise the Governor of the State, the governing board of each county or borough, and interested Federal departments and agencies of our intent and invite comment.

7.14 *What are the steps in the recommendation phase of the wilderness review?* The Regional Director must notify the Director of the Region's recommendations on WSAs proposed for wilderness designation. A Wilderness Study Report must be submitted that summarizes the results of the study and wilderness recommendation. The Director will review the Wilderness Study Report and make the final Service recommendation to the Secretary.

7.15 *What should we include in the Wilderness Study Report?* The study report contains the following information:

A. The Regional Director's wilderness recommendation and rationale;

B. A general description and background history of the area;

C. An analysis of the area's values, resources, and uses;

D. Evidence of public notice of the proposal, including publication in the **Federal Register**, and notices in local newspapers;

E. Evidence that we notified the governor and other concerned officials (*e.g.,* State, local government, and tribal) at least 30 days before holding public hearings;

F. Summary and analysis of comments received plus the public hearing record;

G. Evidence of direct notification and request for comments from the State Historic Preservation Officer regarding the presence or absence of significant cultural resources;

H. A legal description and map showing the proposed wilderness boundary; and

I. An EIS.

7.16 *What additional documents do we need for Secretarial approval of the wilderness recommendation?* The Regional Director will transmit the following additional documentation in support of the Region's wilderness recommendation to the Director for review, in preparation of the Director's recommendation to the Secretary:

A. A draft letter from the Director to the Secretary;

B. A draft letter from the Secretary to the President;

C. A draft letter from the President to the House and Senate;

D. Draft legislative language;

E. A copy of the unit's CCP and final EIS; and

F. A communication strategy and implementation plan.

7.17 *What is the general policy for managing WSAs?* A. We will manage WSAs to maintain their wilderness character to the extent that it will not preclude fulfilling and carrying out refuge purposes and the System mission. Once an area is identified as a WSA, protection will consist of a case-by-case review of any proposed or new site-specific projects, administrative actions, or uses within the WSA. The review will include a minimum requirement analysis and NEPA compliance to assess potential impacts and identify mitigating measures to protect wilderness character. The analysis must consider the entire WSA, not just the specific project area.

B. When we determine that a proposed discretionary action could cause irreversible or irretrievable impacts to the wilderness resource, we will postpone the action pending completion of the wilderness study unless the proposed action is part of an existing management plan and the Regional Director makes a written determination that the action is integral to accomplishing the purposes of the refuge.

C. Other than those activities that exist when an area is identified as a WSA, activities that we will allow are generally temporary uses that create no new surface disturbance and do not involve placement of permanent structures. Valid existing rights must be recognized.

7.18 *What is our general policy for managing proposed wilderness?* Proposed wilderness has undergone a complete wilderness review process and full environmental compliance. We will therefore manage proposed wilderness consistent with guidance provided in the preceding chapters (610 FW 1–6) to the extent that it will not preclude fulfilling and carrying out refuge purposes and the System mission. We will describe the management direction for each proposed wilderness either as part of the CCP (602 FW 3) or in a WMP. The WMP is a form of step-down management plan (602 FW 1.6 and 602 FW 4) that provides detailed strategies and implementation schedules for meeting the broader wilderness goals and objectives identified in the CCP. WMPs are developed following the planning process guidance in 602 FW 1 and 602 FW 3 (602 FW 4). We will not abrogate Congress's prerogative for designating wilderness, so we will preserve the wilderness character of proposed wilderness until Congress takes action.

Exhibit 1.—U.S. Fish and Wildlife Service, National Wildlife Refuge (NWR) System

DESIGNATED WILDERNESS AREAS

Refuge name	Wilderness area name	Class I air quality	Public law	Wilderness acres
Alaska:				
Alaska Maritime NWR	Aleutian Islands		96–487	1,300,000
Alaska Maritime NWR	Bering Sea	Yes	91–504	81,340
Alaska Maritime NWR	Bogoslof		91–504	175
Alaska Maritime NWR	Chamisso		93–632	455
Alaska Maritime NWR	Forrester Island		91–504	2,832
Alaska Maritime NWR	Hazy Island		91–504	32
Alaska Maritime NWR	Semidi		96–487	250,000
Alaska Maritime NWR	Simeonof	Yes	94–557	25,855
Alaska Maritime NWR	St. Lazaria		91–504	65
Alaska Maritime NWR	Tuxedni	Yes	91–504	5,566
Alaska Maritime NWR	Unimak		96–487	910,000
Arctic	Mollie Beattie		96–487	8,000,000
			104–167	
Becharof	Becharof		96–487	400,000
Innoko	Innoko		96–487	1,240,000
Izembek	Izembek		96–487	307,982
Kenai	Kenai		96–487	1,350,558
			104–333	
Koyukuk	Koyukuk		96–487	400,000
Selawik	Selawik		96–487	240,000
Togiak	Togiak		96–487	2,270,160
Yukon Delta	Andreafsky		96–487	1,300,000
Yukon Delta	Nunivak		96–487	600,000
Arizona:				
Cabeza Prieta	Cabeza Prieta		101–628	803,418
Havasu	Havasu		101–628	14,606
Imperial	Imperial		101–628	9,220
Kofa	Kofa		101–628	516,200
Arkansas: Big Lake	Big Lake		94–557	2,144
California:				
Farallon	Farallon		93–550	141
Havasu	Havasu		103–433	3,195
Imperial	Imperial		103–433	5,836
Colorado: Leadville Fish Hatchery	Mount Massive		96–560	2,560
Florida:				
Cedar Keys	Cedar Keys		92–364	379
Chassahowitzka NWR	Chassahowitzka	Yes	94–557	23,579
Great White Heron	Florida Keys		93–632	1,900
Island Bay	Island Bay		91–504	20
J.N. ''Ding'' Darling	J.N. ''Ding'' Darling		94–557	2,619
Key West	Florida Keys		93–632	2,019
Lake Woodruff	Lake Woodruff		94–557	1,066
National Key Deer	Florida Keys		93–632	2,278
Passage Key	Passage Key		91–504	36
Pelican Island	Pelican Island		91–504	6
St. Marks NWR	St. Marks	Yes	93–632	17,350
Georgia:				
Blackbeard Island	Blackbeard Island		93–632	3,000
Okefenokee NWR	Okefenokee	Yes	93–429	353,981
Wolf Island	Wolf Island	Yes	93–632	5,126
Illinois: Crab Orchard	Crab Orchard		94–557	4,050
Louisiana:				
Breton NWR	Breton	Yes	93–632	5,000
Lacassine	Lacassine		94–557	3,346
Maine:				
Moosehorn NWR	Baring Unit	Yes	93–632	4,680
Moosehorn NWR	Birch Islands Unit		91–504	6
Moosehorn NWR	Edmunds Unit		91–504	2,706
Massachusetts: Monomoy	Monomoy		91–504	2,420
Michigan:				
Huron	Huron		91–504	148
Michigan Islands	Michigan Islands		91–504	12
Seney NWR	Seney	Yes	91–504	25,150
Minnesota:				
Agassiz	Agassiz		94–557	4,000
Tamarac	Tamarac		94–557	2,180
Missouri: Mingo NWR	Mingo	Yes	94–557	7,730
Montana:				
Medicine Lake NWR	Medicine Lake	Yes	94–557	11,366
Red Rock Lakes NWR	Red Rock Lakes	Yes	94–557	32,350

DESIGNATED WILDERNESS AREAS—Continued

Refuge name	Wilderness area name	Class I air quality	Public law	Wilderness acres
UL Bend NWR	UL Bend	Yes	94–557	20,819
Nebraska: Fort Niobrara	Fort Niobrara		94–557	4,635
New Jersey:				
Edwin B. Forsythe NWR	Brigantine	Yes	93–632	6,681
Great Swamp	Great Swamp		90–532	3,660
New Mexico:				
Bitter Lake NWR	Salt Creek	Yes	91–504	9,621
Bosque del Apache NWR	Chupadera	Yes	93–632	5,289
Bosque del Apache NWR	Indian Well	Yes	93–632	5,139
Bosque del Apache NWR	Little San Pascual	Yes	93–632	19,859
North Carolina: Swanquarter	Swanquarter	Yes	94–557	8,785
North Dakota:				
Chase Lake	Chase Lake		93–632	4,155
Lostwood	Lostwood		93–632	5,577
Ohio: West Sister Island	West Sister Island		93–632	77
Oklahoma:				
Wichita Mountains	Charons Garden	Yes	91–504	5,723
Wichita Mountains NWR	North Mountain		91–504	2,847
Oregon:				
Oregon Islands	Oregon Islands		91–504	21
Oregon Islands	Oregon Islands		95–450	459
Oregon Islands	Oregon Islands		104–333	445
Three Arch Rocks	Three Arch Rocks		91–504	15
South Carolina: Cape Romain NWR	Cape Romain	Yes	93–632	29,000
Washington:				
Copalis	Washington Islands		91–504	61
Flattery Rocks	Washington Islands		91–504	125
Quillayute Needles	Washington Islands		91–504	300
San Juan Islands	San Juan Islands		94–557	353
Wisconsin:				
Gravel Island	Wisconsin Islands		91–504	27
Green Bay	Wisconsin Islands		91–504	2
Total				20,694,517

Exhibit 2.—Wilderness Acreage Report

Reports Control Symbol R610–5

The Regional Wilderness Coordinator will send this report to the Chief, National Wildlife Refuge System, by October 1 of each year. The report will include:

a. The units with designated wilderness, proposed wilderness, or Wilderness Study Areas and the acreage for each;

b. The total number of Refuge and Wildlife, Ecological Services, and Fisheries staff that have attended wilderness training;

c. A list of refuge managers, Ecological Service project leaders, or Fisheries project leaders at units with designated or proposed wilderness, or significant wilderness responsibilities that have not attended wilderness training; and

d. The recommended schedule for employee wilderness training for the next fiscal year.

Exhibit 3.—Wilderness Character

* * * each agency administering any area designated as wilderness shall be responsible for preserving the *wilderness character* of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its *wilderness character.* [emphasis added]—Section 4 (b), The Wilderness Act of 1964

Preserving ''Wilderness character,'' referenced throughout the Act and throughout this policy, is one of our criteria for judging the appropriateness of potential management actions, public uses, and technologies in Wilderness. Thus, we need to know what it is. We need a sense of how tangible and intangible attributes of a landscape converge to shape wilderness character, and how our actions may diminish or enhance this elusive, but definitive quality.

The natural, scenic condition of the land, natural numbers and interactions of wildlife, the integrity of ecological processes: these are all essential characteristics of the wilderness condition. But at its core, wilderness character, like personal character, is much more than a physical condition. This is what the ness of wilderness conveys—an aura or essence that connects the physical entity to deeper meanings it has come to embody.

The character of wilderness is an unseen presence capable of refocusing our perception of nature and our relationship to it. It is that quality that lifts our connection to a landscape from the utilitarian, commodity orientation that dominates the major part of our relationship with nature to the symbolic realm serving other human needs.

This transcendent function of wilderness character is recognized in the legislative history written by the Wilderness Act's chief author, Howard Zahniser:

We deeply need the humility to know ourselves as the dependent members of a great community of life, and this can indeed be one of the spiritual benefits of a wilderness experience. Without the gadgets, the inventions, the contrivances whereby men have seemed to establish among themselves an independence of nature, without these distractions, to know the wilderness is to know a profound humility, to recognize one's littleness, to sense dependence and interdependence, indebtedness, and responsibility.—The Need for Wilderness Areas, 1956

Like a cathedral or shrine or memorial to which it is so often compared, wilderness serves an ancestral impulse—found throughout time and across cultures—to set some places apart as the embodiment of an ideal. The wilderness ideal, as Zahniser so eloquently stated, is the need for places where we can know ourselves as part of something beyond our modern society and its creations, something more timeless and universal.

Wilderness character is not preserved by our compliance with wilderness legislation and regulation alone. It emerges from the circumstances we impose upon ourselves. It emerges from the decisions we make that test our commitment to our ideals. Does our choice represent a willingness to compromise for convenience and expediency? Or does it represent our willingness to stand tall in the

arena of controversy, the triumph of principle?

Every management decision against an action or technology that might degrade the wilderness condition serves to uphold and strengthen the character it is seen to have. Every decision to forgo actions, technologies, or conveniences that have no seeming physical impact but detract from our commitment to wilderness as a place set apart enhances wilderness and agency character more, because sacrifice for an ideal is the strongest gesture of respect.

The Wilderness Act provides guidance for such decisions. But beyond its listing of certain allowed and prohibited uses, much ambiguity remains. Like the stewards of the Saint Paul Cathedral, Arlington Cemetery, or the Viet Nam Memorial, we have few objective criteria, and no standard metric with which to quantify or evaluate actions that enhance or detract from the character of our nation's natural sacred places. This is the unique challenge of wilderness management, preserving what is unseen and unmeasurable.

But Zahniser's words suggest that chief among our criteria should be the purpose of the action, the spirit in which it is carried out, and the effect it will have on our way of thinking. Will the action reinforce the primacy of our uses and benefits, our convenience and expediency? Or will it serve to affirm our role as humble, respectful guests and servants of the landscape? As the criteria we choose shapes the character of wilderness, so it shapes our character as stewards.

Consider a proposed habitat modification. If its purpose is to aid the survival of an endangered species, the action is congruent with the character of wilderness. But the same action, intended to increase the population of a preferred game species, violates the idea of respect for natural processes. Similarly, use of a wheelchair by the disabled is within the spirit of wilderness use, while a mountain bike, at the same level of technology, is not.

Wallace Stegner called Wilderness America's ''geography of hope''—the hope for an undiminished future. Nowhere is this stewardship ideal expressed more visibly, nowhere is it made more apprehensible than in those remnant landscapes we allow to be wild and free. Free of our tendency to dominate and bend nature to our purposes. Thus free to inspire thinking outside the context of our uses, and beyond the boundary of our life and lifetime.

This convergence of vision and restraint is the source and symbolism of wilderness character. It is that essential being of the land which evokes what Zahniser described as the spiritual benefit of the wilderness experience. It is that quality that transcends physical boundaries to touch the millions who will never come, but who find inspiration and hope just in knowing some places are—and will always be—wild and free.

Exhibit 4.—Minimum Requirement Decision Guide

Note: Exhibit 4 is not printed in the **Federal Register**. It is available on the internet at *http://www.wilderness.net/carhart/docs/min req dec guide.PDF* and by written request to: National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22003.

Exhibit 5.—Light and Noise Pollution

Protection of Dark Night Skies

Dark night skies, unpolluted by manmade light, are integral to the wilderness experience and allow visitors to fully appreciate the stars and planets. Dark night skies are essential to some wildlife. We will cooperate with neighbors and local government agencies to minimize the intrusion of artificial light in wilderness areas.

Noise Pollution

We will strive to preserve the natural quiet and the natural sounds associated with wilderness (for example, the sounds of the winds in the trees or the howl of a wolf). We should monitor activities causing excessive or unnecessary unnatural sounds in and adjacent to wilderness areas, including low-elevation aircraft overflights. We will take action to prevent or minimize unnatural sounds that adversely affect wilderness resources or values or visitors' enjoyment of them.

Exhibit 6.—Leave No Trace

Memorandum of Understanding

Note: Exhibit 6 is not printed in the **Federal Register**. It is available on the internet at *http://refuges.fws.gov/library/* or by written request to: National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22003.

Exhibit 7.—Primary Interpretive Themes for Wilderness

Interpretation provides opportunities for people to forge intellectual and emotional connections to the meanings inherent in wilderness resources. Interpretive themes communicate specific messages based upon the significance of the wilderness resource and experience to the American people. They are the stories through which we convey the values of wilderness to the public. These themes connect wilderness to larger ideas as well as universal meanings and values. They are the building blocks on which we base interpretive products and services for wilderness. The interpretive themes for wilderness areas are:

PRIMARY INTERPRETIVE THEMES FOR WILDERNESS EDUCATION

Theme A	The concept of wilderness, codified in law, originated in the United States with the conviction that some wild land resources are most valuable to Americans left in their natural state (e.g. social, scientific, economic, educational, recreational, and cultural value).
Theme B	As a foundation for healthy and diverse ecosystems, officially designated wilderness and other remaining wild lands provide critical habitat for rare and endangered species and play a significant role in the overall health of natural systems worldwide (e.g. watersheds, air quality).
Theme C	By law, we manage wilderness differently than other federal lands in order to retain its primeval character and preserve wilderness as a special place for humans to examine their relationship to the natural world.
Theme D	Wilderness offers opportunities for personal renewal, inspiration, artistic expression, pride of ownership of our shared heritage, and the prospect of hope for the future. Wilderness has inspired and continues to inspire a distinctive genre of literature and art, enriching millions of lives in the United States and around the world.
Theme E	Wilderness provides opportunities for physical and mental challenge, risk and reward, renewal, self-reliance, solitude, and serves as a haven from the pressures of modern society (e.g. exploration, discovery, and recreation).
Theme F	The survival of wilderness depends on individual and societal commitment to the idea of wilderness and on appropriate visitor use, behavior, and values (e.g. appreciation, values, skills).
Theme G	Wilderness provides a unique setting for teaching ecosystem stewardship as well as science, math, literature, art and other subjects using an interdisciplinary approach (e.g. civics, outdoor skills, music, and others).
Theme H	Wilderness contains primitive areas relatively undisturbed by human activities where scientific research may reveal information about natural processes and living systems that may have wide-ranging applications and may serve as global indicators of ecological change.
Theme I	Cultural and archeological sites found in wilderness can provide a more complete picture of human history and culture. (This includes indigenous peoples, conquests, colonialism and resistance, freedom, independence, and ingenuity, a sense of connectedness, stewardship, and human survival.)
Theme J	The Wilderness Act created a National Wilderness Preservation System that preserves some of the most unique ecological, geological, scientific, scenic, and historical values in the National Park System, the National Wildlife Refuge System, National Forest System, and in public lands administered by the Bureau of Land Management, and that the public and Congress have determined to require special protection.

PRIMARY INTERPRETIVE THEMES FOR WILDERNESS EDUCATION—Continued

Theme K	Wilderness visitors must accept certain inherent risks associated with weather, terrain, water, wildlife, and other natural elements. We cannot guarantee visitor safety, but we can enhance it with proper trip planning, appropriate skill, and responsible behavior.

Exhibit 8.—References

Hendee, John C., Stankey, George H., Lucas, Robert C., 1990, Wilderness Management, North American Press, Golden, Colorado, pp. 219–238.

Zahniser, Howard, 1956, ''The Need for Wilderness Areas,'' The Living Wilderness, Winter-Spring 1956–57, No. 59, pp 37–43.

Exhibit 9.—Wilderness Management Plan Outline

I. Introduction.

A. Wilderness establishment, including contents of pertinent laws, date of establishment, any changes from Secretary's recommendation, pertinent committee report discussion, and special provisions.

B. Objectives for the wilderness area and their relationship to the refuge's purposes and objectives, and System mission, goals, and objectives, including protection of the air quality related values of Class I wilderness areas.

II. Description of the Wilderness Area.

A. Legal and narrative description of the area.

B. Map displaying Service land unit boundary and wilderness area boundary.

C. A description of the current or baseline situation of the wilderness resource, including a description of the wilderness area, natural conditions, management activities, existing facilities, and public use levels and activities.

III. Public Involvement. Describe public involvement activities and provide a summary and analysis of comments received and how the plan responds to them.

IV. Management.

A. Detailed discussions of existing and planned biological, public use, cultural resource, and administrative management activities and permitted uses.

B. Procedures for determining and documenting the minimum requirement for administrative actions we will take in wilderness that might require a generally prohibited use.

C. The minimum requirement analyses for anticipated application of a generally prohibited use.

D. Descriptions of how valid existing rights and congressionally authorized uses are to be administered to provide protection to wilderness values.

E. An explanation of how we will coordinate with adjoining wilderness units so that visitors traveling from one wilderness to another can do so with a minimum of bureaucratic impediments.

F. Indicators of change in resource conditions; standards for measuring that change; and desired conditions, or thresholds, that will trigger management actions to reduce or prevent impacts on the wilderness. Limits of Acceptable Change (LAC) is one framework designed for establishing indicators, standards and desired conditions. (See Hendee, Stankey, and Lucas (1990) in Exhibit 8 References).

V. Research. Describe any past and current research, and identify research needs.

VI. Funds and Personnel. Provide a discussion of staff and funds needed to manage the wilderness.

VII. Monitoring. Identify monitoring requirements and thresholds for action, including procedures for measuring baseline air quality.

VIII. Implementation Schedule. Provide a schedule of implementation, prioritization of action items, staff assignments, and funding requirements to adequately administer the area.

IX. Compatibility Determination

X. Review and Approval.

XI. Appendix.

A. A copy of the Wilderness Act.

B. A copy of the legislation establishing the wilderness.

C. Service wilderness regulations (50 CFR 35), except Alaska.

D. Wilderness study report for the wilderness.

E. NEPA documentation, if applicable.

F. Public hearing record from wilderness study.

G. Congressional hearing record.

H. Congressional committee report accompanying the authorizing legislation.

Dated: November 29, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–18 Filed 1–12–01; 8:45 am]

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Federal Register

Tuesday,
January 16, 2001

Part IV

Securities and Exchange Commission

17 CFR Parts 239, 240, 270, and 274
Role of Independent Directors of Investment Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270 and 274

[Release Nos. 33–7932; 34–43786; IC–24816; File No. S7–23–99]

RIN 3235–AH75

Role of Independent Directors of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to certain exemptive rules under the Investment Company Act of 1940 to require that, for investment companies that rely on those rules: independent directors constitute a majority of their board of directors; independent directors select and nominate other independent directors; and any legal counsel for the independent directors be an independent legal counsel. We also are adopting amendments to our rules and forms to improve the disclosure that investment companies provide about their directors. These amendments are designed to enhance the independence and effectiveness of boards of directors of investment companies and to better enable investors to assess the independence of those directors.

DATES: *Effective Date:* February 15, 2001, except that the rescission of § 270.2a19–1 under the Investment Company Act will become effective May 12, 2001.

Compliance Date: Section III of this release contains information on compliance dates.

FOR FURTHER INFORMATION CONTACT: For information regarding the Investment Company Act rule amendments, contact Jaea F. Hahn, Attorney, Martha B. Peterson, Special Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, or regarding the disclosure amendments, contact Kimberly Browning, Attorney, Peter M. Hong, Special Counsel, or Kimberly Dopkin Rasevic, Assistant Director, Office of Disclosure Regulation, (202) 942–0721, at the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is adopting new rules 2a19–3 [17 CFR 270.2a19–3], 10e–1 [17 CFR 270.10e–1], and 32a–4 [17 CFR 270.32a–4] and amendments to rules 0–1 [17 CFR 270.0–1], 10f–3 [17 CFR 270.10f–3], 12b–1 [17 CFR 270.12b–1], 15a–4 [17 CFR 270.15a–4], 17a–7 [17 CFR 270.17a–7], 17a–8 [17 CFR 270.17a–8], 17d–1 [17 CFR 270.17d–1], 17e–1 [17 CFR 270.17e–1], 17g–1 [17 CFR 270.17g–1], 18f–3 [17 CFR 270.18f–3], 23c–3 [17 CFR 270.23c–3], 30d–1 [17 CFR 270.30d–1], 30d–2 [17 CFR 270.30d–2], and 31a–2 [17 CFR 270.31a–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act''); amendments to Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a–1], and N–3 [17 CFR 274.11b] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–aa] (''Securities Act''); and amendments to Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] (''Exchange Act''). The Commission also is rescinding rule 2a19–1 under the Investment Company Act [17 CFR 270.2a19–1].

Table of Contents

Executive Summary

The Commission is adopting new rules and amendments to rules and forms to enhance the independence and effectiveness of independent directors of investment companies (''funds''). First, we are adopting amendments to require, for funds relying on certain exemptive rules, that:

- Independent directors constitute a majority of the fund's board of directors;
- Independent directors select and nominate other independent directors; and
- Any legal counsel for the fund's independent directors be an independent legal counsel.

Second, the rules and amendments:

- Prevent qualified individuals from being unnecessarily disqualified from serving as independent directors;
- Protect independent directors from the costs of legal disputes with fund management;
- Permit us to monitor the independence of directors by requiring funds to keep records of their assessments of director independence;
- Temporarily suspend the independent director minimum percentage requirements if a fund falls below a required percentage due to an independent director's death or resignation; and
- exempt funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

Finally, we are requiring that funds provide better information about directors, including:

- Basic information about the identity and business experience of directors;
- Fund shares owned by directors;
- Information about directors that may raise conflict of interest concerns; and
- The board's role in governing the fund.

Together, these new rules and amendments are designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with greater information to assess the directors' independence.

I. Background

Mutual funds are organized as corporations, trusts, or limited partnerships under state laws, and thus are owned by their shareholders, beneficiaries, or partners.[1] Like other types of corporations, trusts, or

[1] For simplicity, this release focuses on mutual funds (*i.e.,* open-end funds). The amendments we are adopting, however, apply to all management investment companies, except where noted.

partnerships, a mutual fund must be operated for the benefit of its owners.[2] Unlike most business organizations, however, mutual funds are typically organized and operated by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is separate and distinct from the fund it advises, with primary responsibility and loyalty to its own shareholders.[3] The ''external management'' of mutual funds presents inherent conflicts of interest and potential for abuses that the Investment Company Act and the Commission have addressed in different ways.[4]

One of the ways that the Act addresses conflicts between advisers and funds is by giving mutual fund boards of directors, and in particular the disinterested directors,[5] an important role in fund governance.[6] In relying on fund boards to represent fund investors and protect their interests, Congress avoided the more detailed regulatory provisions that characterize other regulatory schemes for collective investments.[7] The Commission has similarly relied extensively on independent directors in rules we have adopted that exempt funds from provisions of the Act.[8]

Millions of Americans are today invested in mutual funds, which have experienced a tremendous growth in popularity over the past twenty years.[9] In light of this growth, and our growing reliance on independent directors to protect fund investors, last year we undertook a review of the governance of investment companies, the role of independent directors, our rules that rely on oversight by independent directors, and the information that funds are required to provide to shareholders about their independent directors.

We held a Roundtable discussion at which independent directors, investor advocates, executives of fund advisers, academics, and experienced legal counsel offered a variety of perspectives and suggestions.[10] After evaluating the ideas and suggestions offered by Roundtable participants last year, we proposed a package of rule and form amendments that were designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with better information to assess the independence of directors.[11]

We received 142 comment letters on our proposals, including 86 letters from independent directors.[12] Commenters generally commended our efforts to enhance the independence and effectiveness of fund directors, although many offered recommendations for improving portions of the proposals. Many of these letters were helpful to us in formulating the final rules and amendments, which we are today adopting.

We have reason to believe that our efforts to improve the governance of mutual funds on behalf of mutual fund investors have already borne fruit. Our Roundtable discussions and proposed rules have provoked a great deal of discussion among directors, advisers, counsel, and investors about governance practices and policies. After our Roundtable, an advisory group organized by the Investment Company Institute (''ICI'') made recommendations regarding fund governance in a ''best practices'' report (''ICI Advisory Group Report'').[13] Many boards, we understand, have adopted the recommendations set forth in the ICI Advisory Group Report. Some groups of independent directors have hired independent counsel for the first time. Director nomination and selection procedures have been revised.

During the last year, Commissioners and members of the staff began meeting with independent directors and sharing ideas and concerns regarding the governance of mutual funds.[14] Former Commission Chairman David Ruder established the Mutual Fund Directors Education Council, a broad-based group of persons interested in fund governance and operations,[15] whose purpose is to foster the development of educational activities designed to promote the efficiency, independence, and accountability of independent fund directors. The American Bar Association formed a task force to examine the role of counsel to independent directors, and the task force released a report offering guidance to counsel and fund directors

[2] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations, in* The Investment Company Regulation Deskbook § 2.4 (Amy L. Goodman ed., 1997).

[3] As a result of their extensive involvement, and the general absence of shareholder activism, investment advisers typically dominate the funds they advise. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)] (''Proposing Release'') at n.10 and accompanying text.

[4] An investment adviser's shareholders often have an interest in a mutual fund that is quite different from the interests of the fund's own shareholders. For example, while fund shareholders ordinarily prefer lower fees (to achieve greater returns), shareholders of the fund's investment adviser might want to maximize profits through higher fees. *See* Proposing Release, *supra* note 3, at nn.11–25 and accompanying text, for a discussion of the comprehensive regulatory scheme established by the Act to address conflicts of interest between funds and their investment advisers.

[5] We refer to directors who are not ''interested persons'' of the fund as ''independent directors'' or ''disinterested directors.'' *See* section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)](defining ''interested person'').

[6] The Investment Company Act establishes a system of ''checks and balances,'' and relies on independent directors to ''oversee the fund's operations so as to prevent abuses of investors.'' James M. Storey & Thomas M. Clyde, The Uneasy Chaperone 34 (2000). Directors also have broad responsibilities to monitor compliance with securities, corporate and other laws. Robert A. Robertson, *Board Oversight of Mutual Fund Compliance Operations,* Rev. Sec. & Comm. Reg., Oct. 24, 2000, at 1.

[7] For example, in Japan, funds may be structured only in the form of securities investment trusts, which are primarily subject to regulation under the Securities Investment Trust Law. There is no board of directors or board of trustees, and under the Securities Investment Trust Law, a ''trustor company'' manages the trust assets on behalf of the beneficiaries of the trust. The Japanese Ministry of Finance approves the terms and conditions of securities investment trusts, and plays a supervisory role in the day-to-day operations of the trusts. *See* Yoshiki Shimada et al., *Regulatory Frameworks for Pooled Investment Funds: A Comparison of Japan and the United States,* 38 Va. J. Int'l L. 191 (1998).

[8] *See* Proposing Release, *supra* note 3, at nn.24–25 and accompanying text.

[9] Approximately 82.8 million individuals in 48.4 million households in the United States invest in funds. Investment Company Institute, Mutual Fund Fact Book 41 (2000).

[10] *See* SEC, Notice of Sunshine Act Meetings (Feb. 18, 1999) [64 FR 8632 (Feb. 22, 1999)]; *see also* Transcripts from the Roundtable on the Role of Independent Investment Company Directors, Feb. 23–24, 1999 [''Roundtable Transcripts'']. The Roundtable Transcripts are available to the public in the Commission's public reference room and the Commission's Louis Loss Library. They are also available on the Commission's Internet web site <http://www.sec.gov/offices/invmgmt/rountab.htm>.

[11] *See* Proposing Release, *supra* note 3.

[12] The comment letters and a summary of the comments prepared by Commission staff are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. (File No. S7–23–99). The comment summary is also available on the Commission's Internet web site <http://www.sec.gov/rules/extra/brownin1.htm>.

[13] *See* Investment Company Institute, Report of the Advisory Group on Best Practices for Fund Directors: Enhancing a Culture of Independence and Effectiveness (June 24, 1999).

[14] *See, e.g.,* Arthur Levitt, Chairman, SEC, Remarks at the Mutual Fund Directors Education Council Conference (Feb. 17, 2000) (transcript available at <http://www.sec.gov/news/speeches/spch346.htm>); Paul Roye, Director, Division of Investment Management, SEC, What Does It Take To Be an Effective Independent Director of a Mutual Fund?, Address at the ICI Workshop for New Fund Directors (Apr. 14, 2000) (transcript available at <http://www.sec.gov/news/speeches/spch364.htm>).

[15] Members of the Council include independent directors, corporate governance experts, investor advocates, academics, industry members, and investment management attorneys.

regarding standards of independence for counsel, and guidelines for reducing potential conflicts of interest (''ABA Task Force Report'').[16] All of these initiatives have focused attention on the important role of independent directors, and their importance in promoting and protecting the interests of fund shareholders.

II. Discussion

A. Amendments to Exemptive Rules To Enhance Director Independence and Effectiveness

We are amending ten rules that exempt funds and their affiliates from certain prohibitions of the Act (the ''Exemptive Rules'').[17] As discussed further below, the amendments add conditions to the Exemptive Rules to require that, for funds that rely on the rules, (i) independent directors constitute a majority of the board, (ii) independent directors select and nominate other independent directors, and (iii) any legal counsel for the independent directors be an independent legal counsel.[18]

Most commenters supported our goal of enhancing the independence and effectiveness of independent directors of funds that choose to rely on the Exemptive Rules.[19] Some commenters questioned the need to amend the rules, because each rule already requires independent directors to separately approve some of the fund's activities under the rule. We selected these rules because they require the independent judgment and scrutiny of independent directors in overseeing activities that are beneficial to funds and investors, but involve inherent conflicts of interest between the funds and their managers.[20] The amendments are designed to increase the ability of independent directors to perform their important responsibilities under each of these rules.

1. Independent Directors as a Majority of the Board

(a) Board Composition Requirements

We are amending the Exemptive Rules to require that the boards of funds relying on the rules have a majority of independent directors.[21] A majority requirement will permit, under state law, the independent directors to control the fund's ''corporate machinery,'' *i.e.,* to elect officers of the fund, call meetings, solicit proxies, and take other actions without the consent of the adviser.[22] As a result, independent directors who comprise the majority of a board can have a more meaningful influence on fund management and represent shareholders from a position of strength.[23] In short, a board with a majority of independent directors can be more effective in representing investors than a board with a majority of ''inside'' directors.[24] Commenters were supportive of this proposal.[25]

We are allowing funds ample time to implement the new majority independence condition. The compliance date for the majority independence condition is July 1, 2002. Although most funds already have a majority of independent directors, the transition period will allow sufficient time for those that do not, to carry out the selection, nomination, and election of new independent directors in accordance with the amended rules.[26]

(b) Suspension of Board Composition Requirements

We are adopting new rule 10e–1, which temporarily suspends the board composition requirements of the Act and our rules, if a fund fails to meet those requirements because of the death, disqualification, or bona fide resignation of a director. For a fund that relies on one or more of the Exemptive Rules, rule 10e–1 will provide relief if the fund no longer has a majority of independent directors because of the sudden loss of one or more directors.[27]

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[16] ABA, Report of the Task Force on Independent Director Counsel, Subcommittee of Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law: Counsel to the Independent Directors of Registered Investment Companies (Sept. 8, 2000).

[17] The Exemptive Rules are:

Rule 10f–3 (permitting funds to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate);

Rule 12b–1 (permitting use of fund assets to pay distribution expenses);

Rule 15a–4(b)(2) (permitting fund boards to approve interim advisory contracts without shareholder approval where the adviser or a controlling person receives a benefit in connection with the assignment of the prior contract);

Rule 17a–7 (permitting securities transactions between a fund and another client of the fund's adviser);

Rule 17a–8 (permitting mergers between certain affiliated funds);

Rule 17d–1(d)(7) (permitting funds and their affiliates to purchase joint liability insurance policies);

Rule 17e–1 (specifying conditions under which funds may pay commissions to affiliated brokers in connection with the sale of securities on an exchange);

Rule 17g–1(j) (permitting funds to maintain joint insured bonds);

Rule 18f–3 (permitting funds to issue multiple classes of voting stock); and

Rule 23c–3 (permitting the operation of interval funds by enabling closed-end funds to repurchase their shares from investors).

[18] We discuss each of these conditions below. *See infra* Sections II.A.1, II.A.2, and II.A.3.

[19] We have revised the amendments to rule 15a–4, which permits fund boards to approve interim advisory contracts without shareholder approval. Funds have relied on that rule when an advisory contract terminated in unforeseeable circumstances, such as the death of the fund's investment adviser. After we issued the Proposing Release, we amended rule 15a–4 to further permit interim advisory contracts in foreseeable circumstances, when an adviser or controlling person receives a benefit in connection with the termination of the prior advisory contract (*e.g.,* in the context of an adviser merger). *See* Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 24177 (Nov. 29, 1999) [64 FR 68019 (Dec. 6, 1999)]. Three commenters argued that the availability of the rule in *unforeseeable* circumstances should not depend on the fund's compliance with the conditions that we proposed to add to the Exemptive Rules. In addition, one commenter further argued that funds that do not comply with the new conditions could be constrained from terminating an adviser because they are unable to enter into an interim advisory contract without obtaining an exemptive order. In light of these comments, we have determined to amend only the paragraph of rule 15a–4 that permits interim advisory contracts in foreseeable circumstances. *See* rule 15a–4(b)(2).

[20] As we noted in the Proposing Release, the Exemptive Rules provide exemptive relief that affords funds increased flexibility, cost reductions, and the ability to operate for the maximum benefit of investors. At the same time, these rules involve inherent conflicts of interest between funds and their managers, and therefore rely on independent directors to monitor those conflicts. While the Exemptive Rules have greatly expanded the responsibilities of fund boards, most have not contained conditions to enhance director independence and effectiveness. *See* Proposing Release, *supra* note 3, at n.30 and accompanying text. In the future we will be reluctant to issue exemptive orders premised on the oversight of independent directors, if the fund does not meet the new conditions we are today adopting.

[21] The independent directors thus would need to comprise more than half of the membership of the board. The Investment Company Act generally requires that independent directors constitute at least 40 percent of the board. Section 10(a) of the Act (15 U.S.C. 80a–10(a)). Section 10(b)(2) of the Act (15 U.S.C. 80a–10(b)(2)) requires, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's adviser. Section 15(f)(1) of the Act (15 U.S.C. 80a–15(f)(1)) provides a safe harbor for the sale of an advisory business if directors who are not interested persons of the adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract.

[22] *See* Proposing Release, *supra* note 3, at text following n.44.

[23] *See* Proposing Release, *supra* note 3, at nn.36–44 and accompanying text.

[24] *See Burks* v. *Lasker,* 441 U.S. 471, 484 (1979) (discussing the ''independent watchdog'' function of independent directors).

[25] In the Proposing Release, we proposed two alternative board composition standards: (i) a simple majority and (ii) a two-thirds supermajority, as recommended by the ICI Advisory Group Report. We are adopting a simple majority independence standard, which most commenters supported.

[26] *See infra* Section II.A.2 (Selection and Nomination of Independent Directors).

[27] Without the relief provided by rule 10e–1, the consequence of losing an independent director and failing to have a majority of independent directors would be significant and immediate because funds would lose the ability to rely on the Exemptive Rules.

Rule 10e–1 suspends the board composition requirements for 90 days if the board can fill a director vacancy, or 150 days if a shareholder vote is required to fill a vacancy.[28] We have extended the time period when only board action is required (from the 60 day period we proposed) in response to comments that additional time would be needed for independent directors to select and nominate candidates, and for the board to elect new directors.[29]

2. Selection and Nomination of Independent Directors

We are adopting, as a condition of the Exemptive Rules, a requirement that the independent directors of funds relying on those rules select and nominate [30] any other independent directors.[31] Commenters supported the proposal, and many specifically agreed that the self-selection and self-nomination of independent directors fosters an independent-minded board that focuses primarily on the interests of a fund's investors rather than its adviser.[32]

Several commenters asked that we clarify the extent to which fund shareholders or a fund's adviser may participate in the selection and nomination process under the amendments. Control of the selection and nomination process at all times should rest with a fund's independent directors.[33] These amendments are not intended to supplant or limit the ability of fund shareholders under state law to nominate independent directors. The adviser may suggest independent director candidates if the independent directors invite such suggestions, and the adviser may provide administrative assistance in the selection and nomination process. Independent directors, however, should not view participation by shareholders and investment advisers in this process as precluding or excusing the independent directors from the responsibility to canvass, recruit, interview, and solicit independent director candidates.

3. Independent Legal Counsel

We are adopting amendments to each of the Exemptive Rules to require that any legal counsel for the fund's independent directors be an ''independent legal counsel.''[34] We believe that the conflicts involved in the transactions and arrangements permitted by the Exemptive Rules make it critical that independent directors, when they seek legal counsel, be represented by persons who are free of significant conflicts of interest that might affect their legal advice.[35]

The Commission received many comments on this proposal. Most fund management companies, and a number of independent directors and their lawyers, opposed the proposed amendments. Many argued that the selection of counsel was a matter that should be left to independent directors. Some argued that the bar association rules of professional conduct are adequate to assure independence of counsel. Others argued that imposing the independent counsel requirement could deny independent directors competent counsel from larger law firms with many potential conflicts.

Given the vital role of independent directors in the resolution of conflicts between the fund and its investment adviser, it is important that they have access to counsel who is free from conflicting loyalties. This is particularly true when directors are called upon to exercise judgment in certain key areas of their responsibilities such as approving the advisory contract or a distribution plan, approving a merger, monitoring the allocation of fund brokerage, or valuing fund securities.[36] Yet, as we observed in the Proposing Release, some independent directors have relied on

[28] Section 10(e) of the Act [15 U.S.C. 80a–10(e)] currently suspends the Act's board composition requirements for 30 days, if a fund's board may fill a director vacancy, or 60 days, if a shareholder vote is required to fill a vacancy. Section 10(e) also authorizes the Commission to issue rules or orders prescribing longer periods for filling board vacancies.

[29] The time periods begin to run when the fund no longer meets the applicable board composition requirement, even if the fund is not yet aware that it no longer meets the requirement. Funds and directors should be mindful of their responsibilities to maintain the required percentage of independent directors, and should monitor director independence (and other composition issues) accordingly. A fund also could avoid problems posed by the time constraints of rule 10e-1 by maintaining a greater percentage of independent directors than the simple majority required by the Exemptive Rules. *See* ICI Advisory Group Report, *supra* note 13, at 10–12 (recommending as a best practice that funds have a two-thirds majority of independent directors).

[30] Selection and nomination refers to the process by which board candidates are researched, recruited, considered, and formally named.

[31] Rules 12b–1 and 23c–3 already require funds relying on those rules to commit the selection and nomination of independent directors to the discretion of those directors. We are amending rules 12b–1 and 23c–3 to conform their language regarding self-selection and nomination to the language of the other Exemptive Rules.

[32] *See* Kenneth E. Scott, *What Role Is There for Independent Directors of Mutual Funds?,* 2 Vill. J.L. & INV. MGMT. 1, 4 (2000) (''Independence [of a director] is a reflection of how you got on the board and how you can be taken off.''). The self-selection and self-nomination condition applies prospectively, *i.e.*, to independent directors elected after the effective date of the rules. Thus, current independent directors who were not selected and nominated by other independent directors may continue to serve as independent directors until the end of their terms, but any new independent directors must be selected and nominated by the incumbent independent directors. *See* Proposing Release, *supra* note 3, at n.69 and accompanying text.

[33] *See* The Robinson Humphrey Co., Inc., SEC No-Action Letter (Sept. 4, 1976) (analyzing the term ''selected and proposed for election'' in section 16(b) of the Act (15 U.S.C. 80a–16(b)) and concluding that independent directors had not been properly selected by other independent directors).

[34] *See* amended rules 10f–3(b)(11)(ii); 12b–1(c)(2); 15a–4(b)(2)(vii)(B); 17a–7(f)(2); 17a–8(c)(2); 17d–1(d)(7)(v)(B); 17e–1(c)(2); 17g–1(j)(3)(ii); 18f–3(e)(2); and 23c–3(b)(8)(ii). We rely on the concept of ''independence'' both in this rule and in our auditor independence rule. *See* Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7919 (Nov. 21, 2000) (65 FR 76008 (Dec. 5, 2000)) (adopting release); Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7870 (June 30, 2000) (65 FR 43148 (July 12, 2000)) (proposing release). It is important to note, however, that we use the concept in distinct ways in these two rules. In adopting amendments to the auditor independence rule, our goal was to reduce the potential for conflicts of interest that impair the auditor's ability to conduct an objective and impartial audit. Under rules of professional responsibility, attorneys have an obligation zealously to represent their clients. *See* Model Code of Professional Responsibility EC 7–1; *see also* Model Rules of Professional Conduct [''ABA Model Rules''] Rules 1.2(d), 1.3 and 3.1 (1998). With respect to the independent counsel provisions in this rule, we use ''independence'' to refer to the limits on relationships with third parties that might affect counsel's capacity to provide zealous representation in advising and representing a fund's independent directors.

[35] The amendments we are today adopting do not *require* that independent directors retain an independent counsel, but only that any person who acts as legal counsel to the independent directors be an ''independent legal counsel.'' We requested comment on whether to *require* independent counsel for independent directors. Some commenters supported a requirement while others argued that independent directors should decide for themselves whether they need counsel. We have determined that not requiring independent counsel is the appropriate course at this time. We continue to believe, however, that a likely result of our rule amendments will be that many fund directors seek independent counsel. *See* ABA Task Force Report, *supra* note 16, at 3 (''The complexities of the Investment Company Act, the nature of the separate responsibilities of independent directors and the inherent conflicts of interest between a mutual fund and its managers effectively require that independent directors seek the advice of counsel in understanding and discharging their special responsibilities.'').

[36] We believe that independent directors' access to independent counsel is also of key importance when directors address questions of the appropriateness and legality (under sections 17(a) and 17(d) of the Act) of proposed transactions between the fund and its promoter, adviser, or principal underwriter (or any other affiliated person). These matters (and those described in the text above) go to the core of matters addressed by the Act and the relationship between the fund, its adviser, and shareholders and may require the directors to deny fund management's wishes. Independent counsel can assist directors in understanding management proposals, their legal implications, and the obligations of directors under the law. When a lawyer for the independent directors—however learned and well intentioned—also represents the fund's adviser, he may be reluctant to recommend courses of action to the directors that are opposed by the adviser.

counsel who has simultaneously represented the fund's adviser, or who does substantial legal work for the adviser or its affiliates.[37] We continue to be concerned by these conflicts and how they affect the ability of directors to carry out their responsibilities under the Act and the Exemptive Rules.

Funds also should be concerned when counsel to the independent directors have these types of conflicts of interest. The appearance of a conflict undermines the confidence investors have in the independence of their fund's directors to represent *investors'* interests. Directors who accept these conflicts strengthen the argument that more drastic changes are necessary in the way mutual funds are governed.[38] Fund advisers also should be concerned when independent directors engage counsel with substantial conflicts, because the adviser and the funds may be denied a significant defense in any lawsuit charging that its advisory fee or other payments or transactions are excessive or inappropriate.[39]

While we are persuaded that Commission rulemaking is necessary, we appreciate the concerns that the independent directors expressed in their comment letters on the proposed amendments. Many were concerned that the proposal did not afford them sufficient flexibility in selecting counsel. Some misunderstood our proposal as permitting counsel to have conflicts that are only extremely small or remote. That was not our intention, which we have clarified in revising the proposed amendments.

Under the final rule amendments, reliance on each of the Exemptive Rules would be conditioned on any legal counsel for a fund's independent directors being an ''independent legal counsel.'' [40] A person [41] is considered an independent legal counsel if (i) the independent directors determine that any representation of the fund's investment adviser, principal underwriter, administrator (collectively ''management organizations'') or their control persons [42] during the past two fiscal years is or was *sufficiently limited* [43] that it is unlikely to adversely affect the professional judgment of the person in providing legal representation,[44] and (ii) the independent directors have obtained an undertaking from the counsel to provide them information necessary for their determination, and to update promptly that information if the counsel begins, or materially increases, the representation of a management organization or control person.[45]

The final amendments rely on the independent directors to determine whether a person is an independent legal counsel. They must make this determination no less frequently than annually, and the basis for the determination must be recorded in the board's meeting minutes.[46] If the independent directors obtain information that their counsel has begun to represent a management organization or control person, they must determine whether this new representation—together with any other representations of management organizations and control persons—is unlikely to adversely affect the counsel's professional judgment.[47] In order to prevent the fund from losing the availability of the exemptions in these circumstances, the rule provides that counsel can still be considered ''independent legal counsel'' for up to three months, which will provide time for the independent directors to make a new determination about the counsel or to hire a new independent legal counsel.[48]

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[37] *See* Proposing Release, *supra* note 3, at n.80 and accompanying text.

[38] *See* Letter from Phillip Goldstein, Independent Director, Clemente Strategic Value Fund, to Jonathan G. Katz, Secretary, SEC (Feb. 1, 2000), File No. S7–23–99 (''shareholders of open-end funds * * * derive no benefit from independent directors''); Letter from George W. Karpus, President, Karpus Investment Management, to Arthur Levitt, Chairman, SEC (Jan. 21, 2000), File No. S7–23–99 (independent directors are not really independent, they are ''house'' directors ''rubberstamping'' management decisions); Letter from Weschler, Harwood, Halebian & Feffer, to Jonathan G. Katz, Secretary, SEC, (Jan. 14, 2000), File No. S7–23–99 (''There does not appear to be any credible evidence to support the view that independent directors are cost effective from the standpoint of public investors.''). *See* also Samuel S. Kim, Note, *Mutual Funds: Solving the Shortcomings of the Independent Director Response to Advisory Self-Dealing Through Use of the Undue Influence Standard,* 98 Colum. L. Rev. 474 (1998).

[39] When deciding excessive advisory fee cases, courts have cited directors' reliance on independent counsel as a factor evidencing director independence and conscientiousness. *See Schuyt v. Rowe Price Prime Reserve Fund, Inc.,* 663 F. Supp. 962, 965, 982, 986 (S.D.N.Y.) (noting that ''[d]uring all relevant times, the independent directors * * * had their own counsel'' who was an ''important resource'' and whose advice ''the record indicates the directors made every effort to keep * * * in mind as they deliberated''), aff'd, 835 F.2d 45 (2d Cir. 1987); *Gartenberg* v. *Merrill Lynch Asset Management, Inc.,* 528 F. Supp. 1038, 1064 (S.D.N.Y. 1981) (noting that the ''non-interested Trustees were represented by their own independent counsel * * * who acted to give them conscientious and competent advice''), *aff'd,* 694 F.2d 923 (2d Cir. 1982).

[40] As noted above, the amendments as adopted do not *require* that independent directors retain legal counsel, but only that any person who acts as legal counsel to the independent directors be an ''independent legal counsel.'' *See supra* note 35 and accompanying text. An attorney ''acts as legal counsel'' if an attorney-client relationship is established between counsel and the independent directors. We do not view a counsel as representing a fund's investment adviser merely because the counsel accepts payment of fees from the adviser for legal services performed on behalf of the fund or its independent directors as permitted by relevant legal ethics rules. *See* Proposing Release, *supra* note 3, at n.87.

[41] We are adopting as proposed the definition of ''person'' as any natural person or a company (including a partnership or other association) as well as a partner, co-member, or employee of any person. Rule 0–1(a)(6)(iv)(A) [17 CFR 270.0–1(a)(6)(iv)(A)]. Thus, the independent directors should examine any conflicting representations of their individual attorney, as well as conflicting representations of that attorney's law firm, partners, and employees.

[42] We are adopting as proposed the definition of ''control person—as any person—other than a fund—directly or indirectly controlling, controlled by, or under common control with any of the fund's management organizations. Rule 0–1(a)(6)(iv)(B) [17 CFR 270.0–1(a)(6)(iv)(B)].

[43] We have used the phrase ''sufficiently limited'' instead of ''so limited,'' which we used in the proposal, to provide directors somewhat greater latitude than the proposal. It is our intent, therefore, that the scope of the rule be construed by reference to our discussion in this release and not the Proposing Release.

[44] Rule 0–1(a)(6)(i)(A) [17 CFR 270.0–1(a)(6)(i)(A)]. As we stated in the Proposing Release, because the interests of a fund, its shareholders, and its independent directors are nearly always aligned, the independent legal counsel condition does not require independent directors to assess a counsel's representation of the fund itself. *See* Proposing Release, *supra* note 3, at n.94 and accompanying text. We do not consider counsel to the fund or to the fund's adviser to be legal counsel to the independent directors by virtue of the independent directors receiving and relying on advice from such counsel. However, the independent directors should be aware that they do not have their own counsel in those circumstances.

[45] Rule 0–1(a)(6)(i)(B) [17 CFR 270.0–1(a)(6)(i)(B)]. A lawyer generally has an obligation to inform his or her client of changes in the nature of conflicts. *See* ABA Model Rules, Rule 1.7 (stating that a client may waive a conflict of interest only *after consultation*); *see also* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93–372 (1993) (a client's generic waiver of future conflicts would be invalid if the circumstances of a representation change so that the client's previous waiver was not fully informed when given); ABA Task Force Report, *supra* note 16 (providing specific guidance to independent directors of funds when selecting and using legal counsel, and to counsel who advise independent directors). However, a lawyer's obligations in this regard envision that the lawyer assess the effect of the potential conflict first before informing the client, *see* ABA Model Rules, Rule 1.7(a)(1), and in any event may vary among different jurisdictions. The provision in our final rule concerning counsel's undertaking is intended to enable the independent directors to obtain the information they need in order to make their *own* determination about the independence of their counsel.

[46] We would not expect that the board meeting minutes would include detailed information such as law firm billing records. We would, however, expect the minutes to include material information the board considered and relied on in making its determination.

[47] Rule 0–1(a)(6)(iii). This provision also would apply when conflicts arise as a result of a law firm merger, the hiring of a new partner or associate, the merger of two financial services firms, or as a result of a material increase in the scope or nature of the legal counsel's representation of a management organization.

[48] *Id.*

In determining whether a counsel is an ''independent legal counsel'' under the rule, the judgment of the directors is not unbounded; it must be reasonable.[49] The independent directors should consider all relevant factors in evaluating whether the conflicting representations are ''sufficiently limited. [50] For example, independent directors should consider (i) whether the representation is current and ongoing; (ii) whether it involves a minor or substantial matter; (iii) whether it involves the fund, the adviser, or an affiliate, and if an affiliate, the nature and the extent of the affiliation; (iv) the duration of the conflicting representation; (v) the importance of the representation to counsel and his firm (including the extent to which counsel relies on that representation economically); (vi) whether it involves work related to mutual funds;[51] and (vii) whether the individual who will serve as legal counsel was or is involved in the representation.[52] Applying these factors, we do not believe that independent directors could ordinarily conclude that a lawyer whose firm simultaneously represents the fund's adviser and independent directors in connection with matters as important to fund shareholders as the negotiation of the advisory contract [53] or distribution plan, or other key areas of conflict between the fund and its adviser, is an ''independent legal counsel.'' [54]

We admonish directors to consider that your decision in selecting an independent counsel is not merely a matter of personal preference (as some commenters suggested), but an important exercise of your business judgment as an independent director.[55] The final rule makes it clear, however, that you are entitled to rely on information provided by counsel in forming your judgment.[56]

B. Limits on Coverage of Directors Under Joint Insurance Policies

We are adopting an amendment to rule 17d–1(d), which permits funds to purchase ''errors and omissions'' joint insurance policies for their officers and directors.[57] Currently, many of these policies contain exclusions when parties sue each other. As a result, independent directors of funds may not be covered against lawsuits by the adviser and consequently may be reluctant to take actions necessary to protect fund investors, out of concern for personal liability. Under the amendment, which we are adopting as proposed, rule 17d–1(d) is available only if the joint insurance policy does not exclude coverage for litigation between the adviser and the independent directors.[58] Commenters supported the proposed amendments, and agreed that they would allow independent directors to faithfully carry out responsibilities without concern for personal financial security.

C. Independent Audit Committees

We are adopting new rule 32a–4 exempting funds from the Act's requirement that shareholders vote on the selection of the fund's independent public accountant if the fund has an audit committee composed wholly of independent directors.[59] The rule will permit continuing oversight of the fund's accounting and auditing processes by an independent audit committee, in place of the shareholder vote. Commenters agreed that the shareholder ratification has become largely perfunctory, and that an independent audit committee could exercise more meaningful oversight.

Under the new rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund establishes an audit committee composed solely of independent directors that oversees the fund's accounting and auditing processes,[60] (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation, or sets out similar provisions in the fund's charter or bylaws,[61] and (iii) the fund maintains a copy of such an audit committee charter.[62] Some commenters questioned whether the proposed rule would require the audit committee to supervise a fund's day-to-day management and operations. The rule does not require, nor did we intend, that an audit committee perform daily management or supervision of a fund's operations.[63]

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[49] Rule 0–1(a)(6)(i).

[50] By adopting these rules, we do not intend to regulate the legal profession or to suggest that the existence of a professional relationship between the independent directors' counsel and a management organization would necessarily violate applicable codes of legal ethics. Moreover, we do not intend to create a presumption that a lawyer having such a professional relationship did not provide proper, objective legal advice, or that the board's reliance on its counsel was improper, or that any determination the board made based on counsel's advice was itself improper.

[51] Whether counsel's representation of a management organization (or control person) is *unrelated* to a fund is a relevant factor for independent directors to consider when determining if the counsel may provide impartial advice to the independent directors. However, it is not a conclusive factor. Even if legal services are unrelated to a fund, those services may be so substantial, significant, or integral to the business of the management organization (or control person) that the independent directors could determine that the counsel is not an ''independent legal counsel.''

[52] We do not intend this list of factors to be an exhaustive or mandatory list of factors the directors must consider. *See, e.g.,* ABA Task Force Report, *supra* note 16, at 5–9 (providing guidance on factors that boards may wish to consider when assessing the quality and independence of their counsel).

[53] After analyzing the factors, independent directors may, however, conclude that a counsel's representation of a fund's administrator or sub-adviser does not impede that counsel's ability to serve as an ''independent counsel'' to the independent directors. In evaluating whether representation of an administrator (or its control person) is ''sufficiently limited'' for the person to be an ''independent counsel,'' we believe a board could differentiate between an administrator that merely performs ministerial tasks and one that has sponsored, organized, or promoted the fund. Independent directors could reach a similar conclusion regarding a sub-adviser. The Act does not distinguish an adviser from a sub-adviser. *See* section 2(a)(20) of the Act (15 U.S.C. 80a–2(a)(20)). However, we believe that independent directors, in evaluating a counsel's conflicts, could give consideration to the nature of a sub-advisory relationship.

[54] The ABA Task Force Report acknowledges that there are circumstances, such as litigation or other ''obvious adversarial situations,'' in which joint or multiple representations may never be appropriate. ABA Task Force Report, *supra* note 16, at 8. We agree, but believe that there are additional circumstances, due to the unique conflicts that are inherent in the structure of investment companies, in which independent directors should not accept joint and multiple representations.

[55] As discussed below, the compliance date for the legal counsel provision is July 1, 2002. *See infra* Section III.

[56] *See* rule 0–1(a)(6)(ii). The independent directors are entitled to rely on that information unless they know or have reason to believe that the information is materially false or incomplete. *Id.* As a result, if counsel begins or materially increases the representation of a fund management organization but does not inform the independent directors, the independent directors can rely on the previous representation they received so that counsel's change in representation will not trigger the requirement that the independent directors make a new determination within three months. *See* rule 0–1(a)(6)(iii).

[57] Paragraph (d) of rule 17d–1 provides an exemption from paragraph (a) of the rule, which prohibits a fund affiliate from participating in any joint enterprise, joint arrangement, or profit sharing plan without first obtaining a Commission order.

[58] *See* rule 17d–1(d)(7)(iii). The amendments would prohibit exclusions for (i) bona fide (*i.e.,* non-collusive) claims made against any independent director by another person insured under the joint insurance policy, and (ii) claims in which the fund is a co-defendant with an independent director in a claim brought by a co-insured.

[59] *See* section 32(a)(2) of the Act [15 U.S.C. 80a—31(a)(2)].

[60] Rule 32a–4(a).

[61] Rule 32a–4(b).

[62] Rule 32a–4(c). Commenters suggested that we permit the audit committee provisions to be set forth in the charter or bylaws of the fund. The final rule permits the fund either to adopt an audit committee charter or to set forth audit committee provisions in the fund's charter or bylaws. Rule 32a–4(b).

[63] *See* Audit Committee Disclosure, Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648 (Oct. 14, 1999)] at text following n.26 (''We recognize how audit committees function may vary from

Continued

D. Qualification as an Independent Director

In addition to the amendments to enhance the independence of fund boards, we are adopting a new rule to prevent qualified individuals from being unnecessarily disqualified from being considered an independent director. We are also rescinding a rule that has become unnecessary.

1. Ownership of Index Fund Securities

We are adopting new rule 2a19–3, which conditionally exempts an individual from being disqualified as an independent director solely because he or she owns shares of an index fund that invests in the investment adviser or underwriter of the fund, or their controlling persons.[64] As proposed, the exemption would have been available if the value of securities issued by the adviser or underwriter (or controlling person) did not exceed five percent of the value of any index tracked by the index fund. The purpose of this condition was to assure that an independent director's indirect interest in the adviser's securities would not be substantial enough to impair his or her independence and create a conflict of interest.[65] In response to some commenters' concerns that monitoring the five percent limit would be very difficult, we revised the rule so that it provides relief if a fund's investment objective is to replicate the performance of one or more ''broad-based'' indices.[66]

2. Affiliation with a Broker-Dealer

We are rescinding rule 2a19–1, which provides relief from the section of the Act that defines when a fund director is considered to be independent.[67] We had proposed to amend that rule to permit a slightly greater percentage of fund independent directors to be affiliated with registered broker-dealers, under certain circumstances. After our proposal, however, Congress passed the Gramm-Leach-Bliley Act, which amended section 2(a)(19) of the Investment Company Act and established new standards for determining independence under the circumstances we addressed in our proposal.[68] These amendments to the Act obviate the need for the exemptive relief provided by rule 2a19–1, and therefore we are rescinding the rule.[69]

E. Disclosure of Information about Fund Directors

We believe that shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information helps a mutual fund shareholder to evaluate whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations.

In reevaluating our current disclosure requirements, we concluded that, while our fundamental approach has been sound, there are several gaps in the information that shareholders currently receive about directors. We therefore proposed amendments to close these gaps. The proposal would require funds to:

- Provide basic information about directors to shareholders annually so that shareholders will know the identity and experience of their representatives;
- Disclose to shareholders fund shares owned by directors to help shareholders evaluate whether directors' interests are aligned with their own;
- Disclose to shareholders information about directors that may raise conflict of interest concerns; and
- Provide information to shareholders on the board's role in governing the fund.

We are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors.

1. Basic Information

We are adopting the requirement to disclose basic information about directors in an easy-to-read tabular format, as proposed.[70] The table will be required in three places: the fund's annual report to shareholders, SAI, and proxy statement for the election of directors. The table will require for each director: (1) Name, address, and age; (2) current positions held with the fund; (3) term of office and length of time served; (4) principal occupations during the past five years; (5) number of portfolios overseen within the fund complex; and (6) other directorships held outside of the fund complex.[71] The table also requires for each interested director, as defined in Section 2(a)(19) of the Investment Company Act, a description of the relationship, events, or transactions by reason of which the director is an interested person.

Commenters generally supported the proposal, although several commenters

company to company, and companies need flexibility to determine all of the specific duties and functions of their audit committees.'').

[64] Section 2(a)(19) of the Act disqualifies an individual from being considered an independent director if he or she knowingly has any direct *or indirect* beneficial interest in a security issued by the fund's investment adviser or principal underwriter, or by a controlling person of the adviser or underwriter. If a fund seeks to replicate the performance of a securities market index that includes securities of the fund's adviser (or principal underwriter or a controlling person of the adviser or principal underwriter), an issue could arise whether the director knowingly has an indirect beneficial interest in the securities of the adviser (or principal underwriter or controlling person). *See* Proposing Release, *supra* note 3, at n.138 and accompanying text.

[65] The new rule does not address an independent director's ownership of securities of an *actively* managed fund that owns shares of the fund's adviser, underwriter or any of their controlling persons. As we discussed in the Proposing Release, we do not believe an independent director who owns shares of an actively managed fund would ordinarily ''knowingly'' have an indirect beneficial interest in the issuers of securities the fund holds, and thus ownership of such fund would not cause a director to be an ''interested person'' as defined by section 2(a)(19) of the Act. *See* Proposing Release, *supra* note 3, at n.140.

[66] As we stated in the context of Form N–1A, a ''broad-based index'' is an index that ''provides investors with a performance indicator of the overall applicable stock or bond markets, as appropriate. An index would not be considered to be broad-based if it is composed of securities of firms in a particular industry or group of related industries.'' *See* Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] at n.21.

[67] Sections 2(a)(19)(A)(v) and (B)(v) of the Act provide that no person can be an independent director if he or she is, or is affiliated with, a registered broker-dealer.

[68] Section 213(a)(1) of the Gramm-Leach-Bliley Act incorporates the conditions of current rule 2a19–1(a)(1) under the Act. As amended, section 2(a)(19) now permits an independent director to be an affiliate of a broker-dealer, but not if the director or his or her affiliate has executed portfolio transactions for, engaged in principal transactions with, or distributed shares for the fund or certain related funds or accounts within the past six months. Pub. L. No. 106–102, § 213, 113 Stat. 1338, 1397–98 (1999), to be codified at 15 U.S.C. 80a–2(a)(19)(A)(v) and (B)(v).

[69] Under the Administrative Procedure Act [5 U.S.C. 553(b)], notice of proposed rulemaking is not required if the agency for good cause finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Section 213 of the Gramm-Leach-Bliley Act established new standards for determining independence under the circumstances addressed by rule 2a19–1, and the rule is no longer necessary. The Commission therefore finds that proposing the rescission of rule 2a19–1 for public comment is unnecessary.

[70] Item 22(b)(1) of Schedule 14A; Items 13(a) and 22(b)(5) of Form N–1A; Item 18.1 and Instruction 4.e. to Item 23 of Form N–2; Item 20(a) and Instruction 4(v) to Item 27 of Form N–3. For convenience in discussing the requirements, we are not specifically referring to nominees for election as directors. The requirements, however, are applicable to nominees in proxy statements for the election of directors. The disclosure requirements in Item 22 of Schedule 14A also are applicable to information statements prepared in accordance with Regulation 14C and Schedule 14C [17 CFR 240.14c–101].

[71] In response to privacy concerns raised by several commenters, we wish to clarify that a director may provide the address of the fund or the fund's adviser in the table and need not provide his personal address.

opposed as unnecessary the requirement to describe in the table the relationships, events, or transactions that make certain directors ''interested persons.'' Funds are currently required to disclose this information in the proxy statement for the election of directors, and we are adopting this requirement as proposed.[72] We believe it is important that shareholders be provided with an explanation of why certain directors are ''interested persons.''[73]

2. Ownership of Equity Securities in Fund Complex

We are adopting with modifications the requirement to disclose the amount of equity securities of funds in a fund complex owned by each director.[74] Commenters generally agreed with the Commission that disclosure of this information would be useful to shareholders in assessing whether directors' interests are aligned with those of shareholders.

(a) Disclosure of Amounts Owned by Directors

Many commenters expressed concern about the proposed requirement that funds disclose the exact dollar amount of securities directors own in a fund complex. These commenters argued that this disclosure would discourage potential directors from agreeing to serve, in order to avoid intrusions into their privacy, and might cause existing directors to reduce or sell their holdings to avoid publicity about their investments. As an alternative, many suggested that we require funds to disclose directors' equity ownership using specified dollar ranges, rather than exact dollar amounts. These commenters noted that using dollar ranges would provide shareholders with sufficient information to assess whether directors' interests were aligned with their own, making disclosure of exact dollar amounts unnecessary.

We are persuaded by these comments and have modified the proposal to require disclosure of a director's holdings of securities using dollar ranges rather than an exact dollar amount. Funds will be required to disclose directors' equity ownership using the following ranges: None; $1–$10,000; $10,001–$50,000; $50,001–$100,000; or over $100,000. We believe that disclosure of directors' holdings using these dollar ranges will provide investors with significant information to use in evaluating whether directors' interests are aligned with their own, while protecting directors' legitimate privacy interests.

(b) ''Beneficial Ownership''

We received a number of comments requesting clarification about the types of director holdings that would be disclosed under the proposal. Based on these comments, we reevaluated our proposal to require disclosure of securities owned beneficially and of record by each director. Under the proposal, ''beneficial ownership'' would have been determined in accordance with rule 13d–3 of the Exchange Act, which focuses on a person's voting and investment power.[75] In light of our objective of providing information about the alignment of directors' and shareholders' interests, we believe that disclosure of record holdings should not be required and that the focus of ''beneficial ownership'' should be on whether a director's economic interests are tied to the securities, rather than his ability to exert voting power or to dispose of the securities. Therefore, we are modifying the proposal to require disclosure of ''beneficial ownership'' in accordance with the definition contained in rule 16a–1(a)(2) under the Exchange Act.[76] This definition, consistent with our goal, emphasizes the economic incidence of ownership.

(c) Disclosure of Ownership in the Funds the Director Oversees within the Same ''Family of Investment Companies''

We proposed to require aggregate disclosure of a director's holdings in a fund complex, rather than separate disclosure of a director's holdings in a particular fund. We were concerned that fund-specific information might have limited meaning because of the many reasons that a director could have for not holding shares of any specific fund, *e.g.,* that its investment objective did not fill a need in the director's portfolio. Several commenters recommended, however, that disclosure of a director's holdings should be made on a fund-by-fund basis, rather than a complex-wide basis, arguing that it would be more relevant to disclose to shareholders a director's ownership of the specific funds on whose board the director serves. Other commenters, agreed that disclosure of a director's holdings should be on an aggregate basis as proposed, but recommended that the disclosure be limited to a director's aggregate ownership in the funds overseen by a director within a fund complex. These commenters argued that disclosure in this manner is more useful to investors than complex-wide disclosure in assessing whether a director's interests are aligned with their own.

We are persuaded by these comments and have modified the proposal to require disclosure of: (1) Each director's ownership in each fund that he oversees; and (2) each director's aggregate ownership in any funds that he oversees within a fund family. We believe that a director's ownership in a particular fund provides the most direct indication of his alignment with the interests of shareholders in that fund. We continue to believe, however, that disclosure of a director's aggregate ownership will provide shareholders with relevant information about the director's alignment with shareholders. In addition, a director could have many reasons for not holding shares of a specific fund, *e.g.,* that its investment objectives do not match the director's. Disclosure of aggregate ownership will help prevent any inappropriate negative inference about fund management that a fund shareholder could draw from the fact that a director does not hold shares of a particular fund.

For purposes of determining a director's holdings in a fund complex, the Commission proposed to define ''fund complex'' as two or more funds that (1) hold themselves out to investors as related companies for purposes of investment and investor services; or (2) have a common investment adviser or an investment adviser that is an affiliated person of the investment

[72] Instruction 4 to Item 22(b)(1) of Schedule 14A; Instruction 2 to Item 13(a) of Form N–1A; Instruction 2 to Item 18.1 of Form N–2; Instruction 2 to Item 20(a) of Form N–3.

[73] As discussed below, however, we are excluding interested directors from the new conflicts of interest disclosure requirements which we proposed in order to give shareholders better information about independent directors. *See infra* note 84 and accompanying text.

[74] Item 22(b)(5) of Schedule 14A; Item 13(b)(4) of Form N–1A; Item 18.7 of Form N–2; Item 20(f) of Form N–3.

[75] 17 CFR 240.13d—3.

[76] 17 CFR 240.16a–1(a)(2). We also have modified the proposal requiring disclosure of securities owned by an independent director and his immediate family members in an investment adviser or principal underwriter and persons controlling, controlled by, or under common control with an investment adviser or principal underwriter. This requirement is intended to illuminate potential conflicts of interest, and we therefore believe that any record or beneficial securities ownership in these entities should be disclosed, whether the beneficial ownership results from voting power, investment power, or economic interests. Therefore, we have revised the proposal to require disclosure of securities owned if covered by the definition of ''beneficial ownership'' contained in either rule 13d–3 or rule 16a–1(a)(2). Item 22(b)(6) and Instruction 2 to Item 22(b)(6) of Schedule 14A; Item 13(b)(5) and Instruction 2 to Item 13(b)(5) of Form N–1A; Item 18.8 and Instruction 2 of Item 18.8 of Form N–2; Item 20(g) and Instruction 2 of Item 20(g) of Form N–3.

adviser of any of the other funds.[77] Many commenters argued that this definition would result in disclosure of holdings in funds that are too remotely related to funds on whose board the director serves to demonstrate alignment with fund shareholders (*e.g.,* for a director serving on the board of a fund with a sub-adviser, the director's ownership in any other funds that the sub-adviser serves would be disclosed, regardless of whether the funds are otherwise related). These commenters recommended that the Commission adopt a narrower definition of ''family of investment companies,'' which includes only funds that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services.[78] We agree with commenters that the proposed ''fund complex'' definition could result in disclosure of information having little bearing on a director's alignment with shareholders, and are adopting the narrower definition of ''family of investment companies.'' [79]

(d) Date of Disclosure

The equity ownership information must be included in the SAI and any proxy statement relating to the election of directors. For the proxy statement, the equity ownership information must be provided as of the most recent practicable date, as proposed, in order to ensure that shareholders receive up-to-date information when they are asked to vote to elect directors.[80] For the SAI, we have modified the proposal to require that the equity ownership information be provided as of the end of the last completed calendar year.[81] We believe that this modified time period requirement facilitates our goal that investors receive equity ownership information to evaluate whether directors' interests are aligned with their own, while imposing less of a burden on directors, especially those who serve multiple funds with staggered fiscal years.

3. Conflicts of Interest

We are adopting our proposals on conflicts of interest disclosure, with modifications that tailor the requirements more closely to our goals and address commenters' concerns that some aspects of the proposal were overbroad.[82] We proposed to require funds to disclose in the proxy statement and SAI three types of circumstances that could affect the allegiance of fund directors to their shareholders: positions, interests, and transactions and relationships of directors and their immediate family members with the fund and persons related to the fund. The rules we adopt today follow this basic approach.

A number of commenters recommended alternatives to the proposed conflicts of interest disclosure requirements, including: (i) Requiring funds to maintain records of potential conflicts of interest of directors; (ii) permitting independent directors to determine for themselves whether or not conflicts of interest exist that affect the ''independence'' of other independent directors; and (iii) limiting conflicts of interest disclosure to the proxy statement for the election of directors. After careful consideration of these alternatives, we have determined that they would not constitute an adequate substitute for disclosure to shareholders.

We continue to believe that shareholders have a significant interest in information concerning circumstances that may affect the directors' allegiance to shareholders. None of the alternatives suggested by commenters would provide this information to shareholders on a regular basis. The first two alternatives would completely exclude shareholders from the process of evaluating the independence of directors. The third alternative, limiting conflicts of interest disclosure to the proxy statement for the election of directors, ignores the fact that the proxy statement has become an ineffective vehicle for communicating information to fund shareholders on a regular basis because funds generally are no longer required to hold annual meetings.[83]

(a) Modifications to Persons Covered

(1) Interested Directors

We are modifying our proposal to exclude interested directors from the conflicts of interest disclosure requirements in both the SAI and proxy statement.[84] We are persuaded by the commenters' arguments that if the purpose of the conflicts of interest disclosure is to allow investors and the Commission staff to better evaluate the true independence of independent directors, this goal will not be achieved by requiring disclosure of interested directors' potential conflicts of interest. As previously discussed, however, funds will be required to describe the relationships, events, or transactions that make a director an interested person.[85]

(2) Immediate Family Members

We are narrowing the scope of ''immediate family members'' covered by the disclosure requirements to a director's spouse, children residing in the director's household, and dependents of the director.[86] As proposed, ''immediate family members'' also included the director's parents, siblings, children not residing with the director, and in-laws.[87]

We received many comments on this definition, with the overwhelming majority of commenters arguing that the proposed extension of conflicts of interest disclosure to include a director's immediate family members, as defined in the proposal, was overly broad and too burdensome. Commenters noted that the definition, as proposed, would require directors to seek financial information from remote family members with whom they have little or no contact, and that the requirement could impose liabilities on directors without providing the means to enable directors to obtain the required information from reluctant relatives. We are persuaded by the commenters and have addressed their concerns by limiting the definition of ''immediate family members'' along the lines suggested by many commenters. The

[77] *Cf.* redesignated Item 22(a)(1)(vi) of Schedule 14A (definition of fund complex).

[78] *Cf.* Item H of Form N–SAR [17 CFR 274.101] (definition of ''family of investment companies'').

[79] Item 22(a)(1)(iv) of Schedule 14A; Instruction 1(a) to Item 13 of Form N–1A; Instruction 1.a to Item 18 of Form N–2; Instruction 1.a to Item 20 of Form N–3.

[80] Instruction 1 to Item 22(b)(5) of Schedule 14A.

[81] Instruction 1 to Item 13(b)(4) of Form N–1A; Instruction 1 to Item 18.7 of Form N–2; Instruction 1 to Item 20(f) of Form N–3.

[82] Items 22(b)(4), 22(b)(6), 22(b)(7), 22(b)(8), 22(b)(9), and 22(b)(10) of Schedule 14A; Items 13(b)(3), 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), and 13(b)(9) of Form N–1A; Items 18.6, 18.8, 18.9, 18.10, 18.11, and 18.12 of Form N–2; Items 20(e), 20(g), 20(h), 20(i), 20(j), and 20(k) of Form N–3.

[83] *See* Proposing Release, *supra* note 3, at n.149 and accompanying text.

[84] Items 22(b)(4), 22(b)(6), 22(b)(7), 22(b)(8), 22(b)(9), and 22(b)(10) of Schedule 14A; Items 13(b)(3), 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), and 13(b)(9) of Form N–1A; Items 18.6, 18.8, 18.9, 18.10, 18.11, and 18.12 of Form N–2; Items 20(e), 20(g), 20(h), 20(i), 20(j), and 20(k) of Form N–3.

[85] *See supra* 73 note and accompanying text. In addition, we are retaining the existing requirement that funds disclose positions held by interested directors with affiliated persons or principal underwriters of the fund. Item 22(b)(2) of Schedule 14A; Item 13(a)(2) of Form N–1A; Item 18.2 of Form N–2; Item 20(b) of Form N–3.

[86] Item 22(a)(1)(vii) of Schedule 14A; Instruction 1(c) to Item 13 of Form N–1A; Instruction 1.c to Item 18 of Form N–2; Instruction 1.c to Item 20 of Form N–3. The term ''children'' includes step and adoptive children. We are using the term ''dependent'' as defined in section 152 of the Internal Revenue Code. I.R.C. 152.

[87] Proposed Item 22(a)(vi) of Schedule 14A; Proposed Instruction 1(b) to Item 13 of Form N–1A; Proposed Instruction 1.b. to Item 18 of Form N–2; Proposed Instruction 1.b. to Item 20 of Form N–3.

narrower definition ensures that disclosure will only be required with respect to family members from whom directors can reasonably be expected to obtain the required information.[88]

(3) Related Persons

The Commission proposed to require disclosure about circumstances involving directors, on the one hand, and the fund and persons related to the fund, on the other. We are modifying the proposal to exclude administrators from the persons related to the fund that are covered by the requirements. Several commenters expressed concern that inclusion of administrators that are not affiliated with the fund's adviser or principal underwriter would produce irrelevant and unnecessary information for shareholders because interactions between directors and unaffiliated administrators would not create conflicts of interest that could affect an independent director's judgment. We are persuaded by these commenters and note that administrators that control, are controlled by, or are under common control with the adviser or principal underwriter will be covered by the conflicts of interest disclosure.[89]

While some commenters also recommended excluding entities ''under common control'' with the adviser or principal underwriter, we believe that disclosure of interests, positions, and transactions and relationships with entities under common control is important and could highlight circumstances that potentially could affect the judgment of independent directors. We also note that the current proxy rules require disclosure with respect to commonly controlled entities.[90]

Although we are narrowing the scope of immediate family members and related persons in recognition of the overbreadth of our proposal in certain circumstances, we wish to emphasize that a fund's independent directors can vigilantly represent the interests of shareholders only when they are truly independent of those who operate and manage the fund. To that end, we encourage funds to examine any circumstances that could potentially impair the independence of independent directors, whether or not they fall within the scope of our disclosure requirements. There may, for example, be circumstances where an interest of a family member outside the ambit of our rules, or a director's interest in an administrator, impairs the director's ability to represent the interests of shareholders vigilantly.

(b) Other Modifications

(1) Threshold for Disclosure of Interests, Transactions, and Relationships

We are adopting a $60,000 threshold for disclosure of interests, transactions, and relationships.[91] Many commenters requested that the Commission establish a specific dollar threshold that would trigger the disclosure requirements to eliminate the need to make subjective ''materiality'' determinations. We are persuaded by these comments and are adopting the $60,000 threshold, a level recommended by many commenters and contained in the existing proxy rules.[92]

We have replaced a materiality test with the $60,000 threshold in order to facilitate compliance with the disclosure requirements that we adopt today. This change does not, however, reflect a determination that the $60,000 threshold may be equated with ''materiality.'' We note that the antifraud provisions of the federal securities laws may obligate funds to disclose a material conflict of interest between a director and the fund or its shareholders without regard to the $60,000 threshold. For example, a transaction between a director and a fund's adviser may constitute a material conflict of interest with the fund or its shareholders that is required to be disclosed, regardless of the amount involved, if the terms and conditions of the transaction are not comparable to those that would have been negotiated at ''arms-length'' in similar circumstances.

(2) Time Periods

We are adopting, as proposed, a five-year time period for disclosure of positions and interests of directors and immediate family members in the proxy statement for the election of directors.[93] We are, however, reducing the time period for disclosure of positions and interests in the SAI to two calendar years.[94] We believe that, when a shareholder is asked to vote to elect directors, he is entitled to information about potential conflicts covering a significant period of time.[95] We recognize, however, that providing five years of information annually in the SAI, would, as suggested by commenters, increase fund compliance burdens without commensurate benefits to shareholders.

We are adopting, as proposed, the requirement to disclose material transactions and relationships since the beginning of the last two completed fiscal years in the proxy statement for the election of directors.[96] In the SAI, however, we have modified the proposal to require disclosure of transactions and relationships during the two most recently completed calendar years, rather than the last two

[88] A number of commenters recommended that if the Commission adopted the proposed definition of ''immediate family members,'' disclosure of potential conflicts of interest should be limited to those of which the director had actual knowledge. Since we are narrowing the definition of ''immediate family member,'' incorporation of an actual knowledge standard is unnecessary.

[89] Items 22(b)(4)(iv), 22(b)(6)(ii), 22(b)(7)(ii), 22(b)(8)(vii), 22(b)(9), and 22(b)(10)(iii) of Schedule 14A; Items 13(b)(3)(iv), 13(b)(5)(ii), 13(b)(6)(ii), 13(b)(7)(vii), 13(b)(8), and 13(b)(9)(iii) of Form N–1A; Items 18.6(d), 18.8(b), 18.9(b), 18.10(g), 18.11, and 18.12(c) of Form N–2; Items 20(e)(iv), 20(g)(ii), 20(h)(ii), 20(i)(vii), 20(j), and 20(k)(iii) of Form N–3.

[90] *See* Item 22(b)(1) of Schedule 14A (requiring independent directors to disclose direct or indirect securities interests in any person *under common control* with fund's adviser); Item 22(b)(3) (requiring all directors to disclose material transactions to which the adviser, principal underwriter, administrator, any parent or subsidiary of such entities (other than another fund), or any subsidiary of the parent of such entities was or is to be a party).

[91] Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; Items 13(b)(6), 13(b)(7), and 13(b)(8) of Form N–1A; Items 18.9, 18.10, and 18.11 of Form N–2; Items 20(h), 20(i), and 20(j) of Form N–3. In the case of transactions, the $60,000 threshold applies to the size of a transaction, and a materiality standard applies to the director's or immediate family member's interest in the transaction. Item 22(b)(8) of Schedule 14A; Item 13(b)(7) of Form N–1A; Item 18.10 of Form N–2; Item 20(i) of Form N–3. The materiality of the interest is to be determined based on the significance of the information to investors in light of all the circumstances. Instruction 8 to Item 22(b)(8) of Schedule 14A; Instruction 7 to Item 13(b)(7) of Form N–1A; Instruction 7 to Item 18.10 of Form N–2; Instruction 7 to Item 20(i) of Form N–3. This is similar to a provision of the current proxy rules. Item 404(a) of Regulation S–K.

[92] *Cf.* redesignated Item 22(b)(11) of Schedule 14A; Item 404(a) of Regulation S–K. In determining whether the $60,000 threshold is exceeded for interests and relationships, a director's interest is to be aggregated with those of his immediate family members. Instruction 2 to Item 22(b)(7) and Instruction 6 to Item 22(b)(9) of Schedule 14A; Instruction 2 to Item 13(b)(6) and Instruction 5 to Item 13(b)(8) of Form N–1A; Instruction 2 to Item 18.9 and Instruction 5 to Item 18.11 of Form N–2; Instruction 2 to Item 20(h) and Instruction 5 to Item 20(j) of Form N–3.

[93] Items 22(b)(4) and 22(b)(7) of Schedule 14A.

[94] Items 13(b)(3) and 13(b)(6) of Form N–1A; Items 18.6 and 18.9 of Form N–2; Items 20(e) and 20(h) of Form N–3.

[95] Several commenters recommended that the Commission limit all conflicts of interest disclosure to a two-year period. These commenters argued that a two-year time period is consistent with the time limit for material business or professional relationships in section 2(a)(19) of the Act. We note, however, that the five-year time period for disclosure of positions and interests is currently required in the proxy rules. In fact, when the amendments to the proxy rules were adopted in 1994, most of the commenters that addressed the issue of time periods recommended limiting the disclosure of past relationships to the preceding five-year period. *See* Investment Company Act Rel. No. 20614 (Oct. 13, 1994) [59 FR 52689 (October 19, 1994)].

[96] Items 22(b)(8) and 22(b)(9) of Schedule 14A.

fiscal years as proposed.[97] Many commenters noted that a director may serve multiple funds with staggered fiscal years and that a requirement to disclose transactions and relationships for fiscal year time periods could require funds to obtain the information from directors as frequently as monthly, which would be overly burdensome. We have revised the proposal to require two calendar years of disclosure, rather than two fiscal years, in order to reduce this burden for funds with staggered fiscal years, while maintaining the requirement to include two years of disclosure.[98]

(3) Routine, Retail Transactions and Relationships

As proposed, the conflicts of interest disclosure provisions would not have required a fund to disclose routine, retail transactions and relationships, such as a credit card or bank or brokerage account, unless the director is accorded special treatment. At the request of commenters, we are clarifying that the exception for routine, retail transactions and relationships extends to residential mortgages and insurance policies.[99] We also note that the exception for routine, retail transactions and relationships is not limited to the specific transactions and relationships enumerated (credit cards, bank or brokerage accounts, residential mortgages, and insurance policies), but extends to other routine, retail transactions and relationships where the director is not accorded special treatment.

4. Board's Role in Fund Governance

We are adopting, as proposed, disclosure requirements in the proxy rules and the SAI relating to a fund's committees of the board of directors, which commenters generally supported.[100] We are also adopting, as proposed, the requirement to disclose in the SAI the board's basis for approving an existing investment advisory contract.[101]

A number of commenters argued that information about the board's basis for approving an existing advisory contract is not relevant to an investment decision and disclosure of this information will be ''boilerplate'' in nature. After careful consideration of these comments, we continue to believe that shareholders should receive information in the SAI to help them evaluate the board's basis for approving the renewal of an existing investment advisory contract. In approving an investment advisory contract, independent directors must review the level of fees charged. Mutual funds fees and expenses, including advisory fees, are extremely important to shareholders. We note that the United States General Accounting Office (''GAO''), in a recent report to Congress on mutual fund fees, stressed the importance of heightening ''investors'' awareness and understanding of the fees they pay.[102] We believe that the rules we adopt today, which will ensure that shareholders receive specific information on how directors evaluate and approve fees on a regular basis, will help to address the GAO's concerns. In implementing this disclosure requirement, we remind funds that ''boilerplate'' disclosure is not appropriate. Funds are required to provide appropriate detail regarding the board's basis for approving an existing investment advisory contract, including the particular factors forming the basis of this determination.

5. Separate Disclosure

We are adopting, as proposed, the requirement that funds present all disclosure for independent directors separately from disclosure for interested directors in the SAI, proxy statements for the election of directors, and annual reports to shareholders.[103] While several commenters argued that this requirement would confuse shareholders by overemphasizing the differences between independent and interested directors, we believe that the new disclosure format will assist shareholders in understanding information about directors, particularly in evaluating whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations.[104]

6. Technical and Conforming Amendments

The Commission is adopting, as proposed, the technical and conforming amendments to its schedules, forms, and rules.

F. Recordkeeping Regarding Director Independence

We are adopting as proposed the amendments to rule 31a–2, to require funds to preserve for a period of at least six years any record of: (i) The initial determination that a director qualifies as an independent director, (ii) each subsequent determination of whether the director continues to qualify as an independent director, and (iii) the determination that any person who is acting as legal counsel to the independent directors is an independent legal counsel.[105] The rule amendments, which commenters supported, are designed to permit the Commission staff to monitor a fund's assessment of the independence of directors, and to ascertain whether a fund's assessment reflects diligent efforts to evaluate relevant business and personal relationships that might affect each director's independent judgment.[106]

III. Effective Date; Compliance Dates

A. Effective Date

The new rules and amendments to rules and forms that the Commission is adopting today will become effective February 15, 2001. The rescission of rule 2a19–1 will become effective on May 12, 2001, the effective date of section 213 of the Gramm-Leach-Bliley Act.

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[97] Items 13(b)(7) and 13(b)(8) of Form N–1A; Items 18.10 and 18.11 of Form N–2; Items 20(i) and 20(j) of Form N–3.

[98] We also have modified the proposal to require funds to disclose in the SAI cross-directorships held by independent directors and their immediate family members during the last two most recently completed calendar years, rather than the last two fiscal years as proposed. Item 13(b)(9) of Form N–1A; Item 18.12 of Form N–2; Item 20(k) of Form N–3.

[99] Instruction 11 to Item 22(b)(8) and Instruction 9 to Item 22(b)(9) of Schedule 14A; Instruction 10 to Item 13(b)(7) and Instruction 8 to Item 13(b)(8) of Form N–1A; Instruction 10 to Item 18.10 and Instruction 8 to Item 18.11 of Form N–2; Instruction 10 to Item 20(i) and Instruction 8 to Item 20(j) of Form N–3. We also note that sales load waivers granted to fund directors generally would not be required to be disclosed as ''material'' transactions or relationships, provided that such waivers are disclosed as otherwise required. *See* Instruction 3 to Item 18(c) of Form N–1A; Instruction 3 to Item 5.2 of Form N–2; Instruction to Item 23(b) of Form N–3 (requiring funds to provide explanations for any differences in the price at which securities are offered generally to the public and the prices at which securities are offered to any class of individuals).

[100] Items 7(e) and 22(b)(14) of Schedule 14A; Item 13(b)(2) of Form N–1A; Item 18.5 of Form N–2; Item 20(d) of Form N–3.

[101] Item 13(b)(10) of Form N–1A; Item 18.13 of Form N–2; Item 20(l) of Form N–3.

[102] United States General Accounting Office, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition (June 2000) at 97.

[103] Instruction 3 to Item 22(b) of Schedule 14A; Instruction 2 to Item 13 of Form N–1A; Instruction 2 to Item 18 of Form N–2; Instruction 2 to Item 20 of Form N–3.

[104] We reiterate that funds may present information regarding independent and interested directors in a single table or chart, so long as the information for independent and interested directors is provided in separate sections within the table or chart. *See* Proposing Release, *supra* note, at text accompanying and following n.226.

[105] *See* rule 31a–2(a)(4), (5).

[106] For a discussion of the Commission staff's views on the types of professional and business relationships that may be considered material for purposes of sections 2(a)(19)(A)(vi) and (B)(vi) of the Act, *see* Interpretive Matters Concerning Independent Directors of Investment Companies, Investment Company Act Release No. 24083 (Oct. 14, 1999) [64 FR 59877 (Nov. 3, 1999)].

B. Compliance Dates for Investment Company Act Rule Amendments

1. *February 15, 2001.* Persons may begin to rely upon new rules 2a19–3, 10e–1 and 32a–4 on February 15, 2001, the effective date of these rules.

2. *July 1, 2002.* After July 1, 2002: (i) persons may rely upon any of the Exemptive Rules (rules 10f–3, 12b–1, 15a–4(b)(2), 17a–7, 17a–8, 17d–1(d)(7), 17e–1, 17g–1(j), 18f–3, and 23c–3) only if they comply with each of the three new conditions for use of each rule; (ii) persons may rely upon rule 17d–1(d)(7) only if any joint insurance policy then in effect does not exclude coverage of litigation between the independent directors and another insured person under the amended rule;[107] and (iii) funds must begin to comply with the recordkeeping requirements of amended rule 31a–2.

C. Compliance Date for Disclosure Amendments

January 31, 2002. All new registration statements and post-effective amendments that are annual updates to effective registration statements, proxy statements for the election of directors, and reports to shareholders filed on or after January 31, 2002 must comply with the disclosure amendments. Based on the comments, we believe that this will provide funds with sufficient time to make the necessary changes to disclosure documents. We note that a post-effective amendment that is filed for any purpose other than those specifically enumerated in paragraph (b)(1) of rule 485 is required to be filed pursuant to rule 485(a).[108] We would not, however, object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b), unless information is included in response to the new conflicts of interest disclosure requirements, provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.[109] Thereafter, funds must make their own determination as to whether their annual updates should be filed pursuant to rule 485(a) or may be filed pursuant to rule 485(b) under the Securities Act.[110]

[107] *See* rule 17d–1(d)(7)(iii).

[108] 17 CFR 230.485.

[109] 17 CFR 230.485(b). This also would apply to closed-end interval funds filing post-effective amendments pursuant to rule 486(b) under the Securities Act. 17 CFR 230.486(b).

[110] 17 CFR 230.485(a) and 230.485(b). Likewise, closed-end interval funds filing future post-effective amendments must determine whether they must file pursuant to rule 486(a) or may file pursuant to rule 486(b) of the Securities Act. 17 CFR 230.486(a) and 230.486(b).

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. In the Proposing Release, we requested comments and specific data regarding the costs and benefits of the proposed amendments to the Exemptive Rules [111] and the proposed new rules. Six commenters responded to our request for comments on the cost-benefit analysis. The commenters focused on a number of issues, particularly the independent counsel proposal and the disclosure proposals. These comments are addressed below.

A. Amendments to the Exemptive Rules

The Commission is adopting the proposed amendments to the Exemptive Rules and the proposed new rules, with certain changes (together, the ''Amendments''). The Amendments require that, for funds relying on those rules: (i) independent directors constitute a majority of their boards; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the fund's independent directors be an independent legal counsel. The Amendments are designed to enhance the independence and effectiveness of independent directors, who are charged with overseeing the fund's activities and transactions under the Exemptive Rules. Boards that meet these conditions should be more effective at exerting an independent influence over fund management. Their independent directors should be more likely to have their primary loyalty to the fund's shareholders rather than the adviser, and should be better able to evaluate the complex legal issues that are often faced by fund boards with an independent and critical eye. The Amendments, therefore, should provide substantial benefits to shareholders by helping to ensure that independent directors are better able to fulfill their role of representing shareholder interests and supplying an independent check on management. While these benefits are not easily quantifiable in terms of dollars, we believe that they are real, and that the Amendments will strengthen the hand of independent directors to the advantage of shareholders.

The Amendments may impose some costs on funds that choose to rely on the Exemptive Rules. These costs are discussed below. Funds that do not rely on an Exemptive Rule, however, will not be subject to the new conditions and should not incur any costs associated with those conditions.[112]

Independent directors as a majority of the board. The Amendments require funds to have independent directors constitute a simple majority of their boards in order to rely on the Exemptive Rules. Because, as noted above, most mutual funds today have boards with independent majorities,[113] it appears that the Amendments will not impose substantial costs on funds as a group.

Funds that currently do not have a majority of independent directors on their boards and that would like to rely on the Exemptive Rules may incur some costs. The Commission, however, has no reasonable basis for estimating those costs. Those funds could come into compliance with the majority requirement of the Amendments in a number of ways. For example, funds could: (i) Decrease the size of their boards and allow some inside directors to resign; (ii) maintain the current size of their boards and replace some inside directors with independent directors; or (iii) increase the size of their boards and elect new independent directors.

If new independent directors are elected in order to comply with the Amendments, the fund would incur the costs of preparing a proxy statement and holding a shareholder meeting to elect those independent directors, as well as the costs of compensating those directors.[114] The Commission, however, has no reasonable basis for determining how many funds that currently do not have independent directors as a majority of their boards will choose to comply with the Amendments by electing new independent directors.

Independent director self-selection and self-nomination. The Amendments require independent directors to select and nominate any other independent directors. This change should not impose significant new costs on funds, because many funds already have adopted this practice.[115] Although some

[111] *See* Proposing Release, *supra* note , at text following n.33.

[112] One commenter stated that the Commission's proposed amendments and rules will increase the costs of relying on the Exemptive Rules, and that the ''financial impact of the [Commission's] Proposal is underestimated.'' The commenter did not provide specific dollar figures to quantify what it believed were more accurate reflections of the possible costs of the Amendments. Moreover, whether a particular fund incurs additional costs, and the amount of those costs, will depend upon a number of factors specific to the fund.

[113] *See* Proposing Release, *supra* note , at n.39 and accompanying text.

[114] Under some circumstances a vacancy on the board may be filled by the board of directors. *See* section 16(a) of the Act. In those cases, the fund would not incur the costs of the proxy statement and shareholder meeting.

[115] *See* Proposing Release, *supra* note 3, at n.66 and accompanying text.

funds do not currently follow this practice and will need to adopt it in order to rely on the Exemptive Rules, we are not aware of any costs that would result from requiring a fund's incumbent independent directors to select and nominate other independent directors.

Independent legal counsel. Lastly, the Amendments require any legal counsel to a fund's independent directors to be an independent legal counsel.[116] The Amendments do not require independent directors to retain legal counsel, but do require any person that acts as counsel to the independent directors to qualify as an independent legal counsel. Independent directors who are represented by counsel who does not meet the new definition of ''independent legal counsel'' thus may have to retain different counsel if their fund chooses to rely on any of the Exemptive Rules. If a substitution of counsel is necessary, it may lead to an increase in costs as described below.

B. Definition of Independent Legal Counsel

Rule 0–1 defines certain terms for purposes of the rules and regulations under the Investment Company Act. The Commission is amending this rule to add a definition of the term ''independent legal counsel.'' Under the new definition, a person is an independent legal counsel if a majority of the fund's independent directors determine, in the exercise of their business judgment, based on information obtained from such person, that any representation of the fund's adviser, principal underwriter, administrator,[117] or any of their control persons [118] since the beginning of the fund's last two completed fiscal years is unlikely to adversely affect the professional judgment of the person in providing legal representation to the independent directors. The basis of the independent directors' determination is required to be recorded in the minutes of the directors' meeting.

The new definition of ''independent legal counsel'' should help to ensure that independent directors' counsel is able to provide objective legal advice concerning the complex legal issues faced by those directors. This change thus should benefit both shareholders and independent directors by helping those directors to better carry out their responsibilities as shareholder representatives. Shareholders also will benefit from the requirement that the independent directors' determinations be recorded in the minute books of the fund, because this requirement will enable the Commission staff to review independent directors' determinations that their counsel qualifies as independent legal counsel.

The new definition will impose costs on some funds that rely on the Exemptive Rules.[119] We assume that approximately 3,200 funds rely on at least one of the Exemptive Rules annually.[120] We further assume that the independent directors of approximately one-third of those funds (1,065) would be required to make the specified determination in order for their counsel to meet the definition of ''independent legal counsel.'' [121] We estimate that each of these 1,065 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed requirement that this determination be recorded in the fund's minute books,[122] for a total annual burden of approximately 799 hours. Based on this estimate, the total annual cost to funds of this new definition would be approximately $70,505.[123] We estimated in the Proposing Release that the cost of the new definition would be approximately $70,505, and one commenter argued that the actual cost of the proposed definition would ''far exceed'' that amount.[124] Another commenter stated that ''there are likely to be substantial costs incurred by funds if they are forced to hire new counsel to independent directors because counsel has also represented the adviser.'' [125] We do not believe the cost will ''far exceed'' the estimated amount. The rule relies solely on the independent directors to make a good faith determination that a person is an

[116] As discussed above, we are amending rule 0–1 to include a definition of ''independent legal counsel.'' *See* Proposing Release, *supra* note 3, at n.87 and accompanying text; *see also infra* notes 120–125 and accompanying text (discussing the costs and benefits of this proposed definition).

[117] In connection with this new definition, we also are amending rule 0–1 to define an ''administrator'' as any person who provides significant administrative or business affairs management services to a fund. This definition is substantially similar to the definition of administrator that is currently contained in Item 22(a)(1)(i) of Schedule 14A and Item 15(h)(1) of Form N–1A. Adding this definition to rule 0–1 should benefit funds by helping to clarify the scope of the definition of independent legal counsel. We are not aware of any costs that would be associated with this definition of administrator.

[118] We are amending rule 0–1 to define ''control person'' as any person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with a fund's investment adviser, principal underwriter, or administrator. This definition should benefit funds by helping to clarify the scope of the definition of independent legal counsel. We are not aware of any costs that would be associated with this definition.

[119] Among other things, the Amendments require that, for funds relying on those rules, any legal counsel for the independent directors of the fund be an ''independent legal counsel.''

[120] Based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998, we estimate that there are approximately 3,560 funds that could rely on one or more of the Exemptive Rules. Of those funds, we assume that approximately 90 percent (3,200) actually rely on at least one Exemptive Rule annually.

[121] We assume that the independent directors of the remaining two-thirds of those funds (2,135) will choose not to have counsel (but instead rely in some circumstances on counsel who does not represent them), so that no determination by the independent directors would be necessary.

[122] This estimate is based on a staff assessment of the burden associated with this proposed recordkeeping requirement in light of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[123] To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual industry hour burden (532 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and one-third of that annual hour burden (267 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((532 × $125/hour) + (267 × $15/hour) = $70,505).

[124] The commenter argued that, using the Commission's estimate, if the 1,065 funds that make a specific determination regarding ''independent legal counsel'' retain separate new counsel to represent them, the ''total annual cost of the Commission's proposal will exceed $26 million'' (assuming the average annual retainer for each separate counsel will be $25,000). While we agree that there may be additional costs imposed by rule 0–1 if a board finds its current counsel is not independent and wishes to retain new counsel, it is also likely that the cost of new counsel would be partially offset by the lower amount of fees to be paid to prior counsel. Some boards may decide against appointing counsel. Moreover, the amended rule is different from the proposed rule, and gives the independent directors sole discretion to determine whether their counsel is independent. Thus, the overall additional costs should be far less than those suggested by the commenter.

[125] This commenter suggested that there would be additional costs associated with new counsel, which would need to familiarize itself with the fund, its charter documents, its contracts, the service providers, and other information in order to effectively represent the fund's independent directors. Similarly, the commenter stated that as mergers and acquisitions of fund advisers accelerate, many fund boards will increasingly have to look to outside counsel as one of the few, if not the only, source of continuity and institutional knowledge. We agree that costs may be incurred if the independent directors retain new counsel. However, the Commission cannot predict with any certainty how often this will occur, or the fees charged by the new counsel. Moreover, as law firms experience their own mergers, acquisitions, and turnover of attorneys, new lawyers frequently must familiarize themselves with the fund and its operations. These are costs that law firms would and might pass on to funds whether or not we adopt the new rule.

The same commenter also expressed concern that the Proposing Release did not factor the costs of law firms to initially screen and thereafter continuously monitor legal work performed to ensure continued independence. Most law firms already screen and monitor any new matters for conflicts of interest. We do not believe that our rules will affect this screening and monitoring, nor do we believe law firms will have to establish new systems for the initial screening and continued monitoring of conflicts.

independent counsel. We are unable to predict with any certainty how many independent directors will obtain new counsel because they determine that their current counsel is not ''independent.'' Each evaluation of counsel will be fact-specific, and each board will have to make its own determination with respect to its counsel. Some independent directors may choose not to hire their own legal counsel. The costs of obtaining new counsel also may be partially offset by savings generated by reductions in payment to current counsel, once they cease providing their services to the independent directors.

C. Suspension of Board Composition Requirements

New rule 10e–1 will increase the periods for which the independent director minimum percentage requirements of the Act, and of the rules under the Act, are temporarily suspended if the death, disqualification, or bona fide resignation of an independent director causes the representation of independent directors on the board to fall below that required by the Act or our rules. The new rule will benefit funds by helping to ensure that if a fund's board falls below the independent director minimum percentage requirements in these circumstances, the fund will not immediately face the severe consequences of losing the availability of the Exemptive Rules.

One commenter stated its opinion that there will be significant costs imposed on funds if the time periods suggested in the Proposing Release were not increased. We extended one of the proposed time periods for rule 10e-1 in response to concerns voiced by commenters, and we believe that the periods for which the rule would suspend the independent director minimum percentage requirements are consistent with concerns for investor protection. As amended, the new rule appears not to have any costs for investors or funds.

D. Limits on Coverage of Directors under Joint Insurance Policies

Rule 17d–1(d)(7) under the Act permits funds to purchase joint liability insurance policies without first obtaining a Commission order permitting this joint arrangement, provided that certain conditions are met. The Commission is amending this rule to make it available only for joint liability insurance policies that do not exclude coverage for independent directors' litigation expenses in the event that they are sued by the fund's adviser. This change should benefit shareholders by making it possible for independent directors to engage in the good faith performance of their responsibilities under the Act and our rules without concern for their personal financial security. For the same reasons, the rule change also should benefit independent directors.

Because obtaining this type of coverage may cause the premiums charged by some insurance providers for joint liability insurance policies to increase, this amendment may have some costs for funds.[126] The Commission, however, has no reasonable basis for estimating the possible increase in premiums that may result from this proposal.

E. Independent Audit Committees

Section 32(a)(2) of the Act requires that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection. New rule 32a–4 exempts a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund's auditor. The new rule could provide significant benefits to shareholders. Many believe shareholder ratification of a fund's independent auditor has become a perfunctory process, with votes that are rarely contested. As a consequence, we believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than shareholder ratification of the choice of auditor. In addition, funds that rely on section 32(a)(2) will no longer have to obtain shareholder ratification or rejection of their auditor on an annual basis, and this change should save some printing costs with respect to proxy materials.

New rule 32a–4 may impose certain costs on those funds that choose to rely on the exemption. It appears that these costs will likely be minimal and will be justified by the relief provided by the exemption. To rely on the exemption, among other things, a fund's board of directors must adopt an audit committee charter that sets forth the committee's structure, duties, powers, and methods of operation, or similar audit committee provisions must appear in the fund's charter or bylaws. The fund also must preserve that charter, and any modifications to the charter, permanently in an easily accessible place.[127] We estimate that there are approximately 3,490 investment companies that may rely on the proposed rule.[128] We assume that approximately 15 percent (524) of those funds are likely to rely on the exemption. For each of those funds, we estimate that the adoption of the audit committee charter would require, on average, 2 hours of director time and 2 hours of professional time,[129] for a total one-time burden of approximately 2,096 hours, and a total one-time cost of approximately $655,000.[130] We also estimate that each of the funds relying on the rule would be required to spend approximately 0.2 hours annually to comply with the proposed requirement that they preserve permanently their audit committee charters,[131] for an additional total annual hour burden of 105 hours, and an additional total annual cost of approximately $5,425.[132]

In addition, some funds pay their directors an extra fee for each committee on which they serve.[133] Those funds may incur the additional costs of audit committee fees if they establish an audit committee in order to rely on the proposed exemption. Of those funds likely to rely on the exemption, however, we have no basis for determining the number that would pay

[126] The ICI Mutual Insurance Company (''ICI Mutual''), which insures funds representing approximately 70 percent of all open-end fund assets, announced last year that it was making available to funds a standard policy endorsement that permits independent directors to recover defense costs, settlements, and judgments in ''insured vs. insured'' claims otherwise covered under the policy. *See* Proposing Release, *supra* note , at n.111. According to an ICI Mutual representative, that company is not charging funds any additional premiums for this coverage. It is possible, however, that other insurance providers might charge funds additional premiums for providing this type of coverage.

[127] These conditions are designed to enable the Commission staff to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the exemption.

[128] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[129] This estimate is based on a review of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[130] To calculate this one-time cost, the Commission staff used $500 per hour as the average cost of directors' time and $125 per hour as an average hourly wage for professionals ((2 hours × 524 funds × $500/hour) + (2 hours × 524 funds × $125/hour) = $655,000).

[131] This estimate is based on a review of the estimated hour burdens associated with other rules under the Act that impose similar collection of information requirements.

[132] To calculate the total annual cost of the proposed rule, the Commission staff assumed that one-third of the total annual hour burden (35 hours) would be incurred by professionals with an hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (70 hours) would be incurred by clerical staff with an hourly wage rate of $15 per hour ((35 × $125/hour) + (70 × $15/hour) = $5,425).

[133] In some cases, funds pay these additional committee fees only if the committee meeting is held on a day when a board meeting is not scheduled.

their independent directors a separate fee for service on the audit committee, or the likely amount of those fees.[134]

F. Qualifications as an Independent Director

New rule 2a19–3 should benefit shareholders, funds, and independent directors by working to prevent qualified individuals from being unnecessarily disqualified from serving as independent directors. New rule 2a19–3 will benefit both funds and their independent directors by clarifying the status of independent directors who own shares of index funds.

The Commission is not aware of any costs to funds that would result from the new rule. There also should be no costs to investors because, consistent with concerns for investor protection, the new rule will not permit individuals who have affiliations or business interests that could impair their independence to serve as independent directors. The new rule applies to funds that replicate a broad-based index or indices, and does not include the five percent threshold of the proposed rule, and therefore funds will not have to monitor the percentage of an index that is made up of the securities of the fund's adviser, lead underwriter, or their controlling persons.[135]

G. Disclosure of Information about Fund Directors

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comment and data regarding the costs and benefits of the disclosure amendments. A few commenters specifically addressed the Commission's estimates, and they generally argued that the Proposing Release underestimated the costs to be incurred in connection with the proposed amendments. The commenters, however, did not provide specific cost or benefit data in response to the Proposing Release. As discussed above, after careful consideration of the comments we received in response to our Proposing Release, we have tailored the disclosure requirements to better achieve our goals and also addressed the concerns of commenters by modifying the scope of the proposed disclosure amendments.

The amendments to the proxy rules and Forms N–1A, N–2, and N–3 will provide fund investors with improved information about directors. Because independent directors are the shareholders' representatives and advocates, shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information will help a fund shareholder evaluate whether his designated representatives can, in fact, act as independent, vigorous, and effective representatives.

We believe that the amendments benefit investors in several ways. The requirement that mutual funds disclose basic information about directors in an easy-to-read tabular format in the fund's annual report to shareholders, SAI, and proxy statements for the election of directors benefits shareholders by ensuring that shareholders receive information about the identity and experience of their directors both annually and whenever they are asked to vote to elect directors. Moreover, this information benefits prospective investors who may obtain the information, without charge, upon request.

The amendments require that funds disclose: (1) Each director's ownership in each fund that he oversees; and (2) each director's aggregate ownership in any funds that he oversees within a fund family. This information benefits shareholders and prospective investors by making available in the SAI information that may show the alignment of director interests with those of shareholders. In addition, shareholders also benefit by receiving this information in the proxy statements whenever they are asked to vote to elect directors.

Our amendments regarding circumstances that may raise conflict of interest concerns for directors benefit investors by enabling investors to decide for themselves whether an independent director would be an effective advocate for shareholders. Disclosure of this type of information also results in its public dissemination, bringing these circumstances to the attention of fund shareholders, and encouraging the selection of independent directors who are independent in the spirit of the Act. Finally, this information assists the Commission in determining whether to exercise its authority under section 2(a)(19) of the Act to find that a person is an interested person of a fund by reason of having had, at any time since the beginning of the last two completed years of the fund, a material business or professional relationship with the fund and certain persons related to the fund.

The modifications to the disclosure requirements of matters related to the board's role in governing a mutual fund benefit shareholders by allowing them to determine more readily whether the directors are effectively representing shareholders' interests, independent of fund management.

The amendments impose certain costs on the fund industry. The costs associated with the proposed amendments include the resources expended by funds in collecting the information and preparing the disclosure documents.[136] Although we have tailored the proposal to better achieve our goals and to address the concerns of commenters, we do not believe that the overall cost burden of the amendments was materially affected.

Proxy Statements

The hour burden for preparing proxy statements at the time of the Proposal Release was 96.2 hours per proxy statement, and we estimated that approximately ⅓ of those hours—or 32 hours—are expended collecting and disclosing information about directors and nominees.[137] We estimated the additional burden hours that would be imposed by the proposed disclosure requirements to be 10 hours per proxy statement.[138]

We estimate the annual industry cost of the proposed amendments to the proxy statements to be 10,000 hours, or $1.25 million, based on an estimated 1,000 proxy statements that are filed annually.[139]

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[134] We also have no basis for determining how many funds would choose to avoid those fees by scheduling audit committee meetings for the same day as a board meeting.

[135] *See supra* Section I.E.2.

[136] One commenter argued that the Commission failed to account for the costs to funds when potential and existing directors are discouraged from serving on fund boards due to the burdens of the proposed disclosure amendments. The commenter, however, failed to provide any quantifiable data to support the commenter's argument. Moreover, in tailoring the disclosure amendments to better achieve our goals, we have addressed the concerns of commenters regarding the scope of the disclosure requirements.

Another commenter noted that the Commission failed to account for the legal costs associated with increased litigation that would arise from the new disclosure requirements. Again, the commenter failed to provide any data for us to consider.

[137] This estimate was based on a staff assessment of the different types of information required in proxy statements.

[138] This estimate was based upon a staff assessment of the proposed amendments in light of the hour burden and reporting requirements at the time of the Proposal Release.

As stated above, the additional hours were based on the additional time funds would devote to determining what information needs to be disclosed, formulating queries for directors, and preparing the disclosure documents.

[139] The estimated number of proxy statements was based on the approximate number of proxy

Registration Statements

Because the information to be disclosed in the registration statements is the same as in the proxy statements, we believe that the hour burden for the amendments per registration statement will be approximately the current hour burden for collecting and disclosing director information under the current proxy rules plus the hour burden for the proposed amendments to the proxy rules. As stated above, we estimated the current hour burden for collecting and disclosing information about directors and nominees in proxy statements to be 32 hours per proxy statement and the burden hours for collecting and disclosing the enhanced information about directors and nominees to be 10 hours per proxy statement, for a total of 42 hours.

Form N–1A

The hour burden for Form N–1A is on a per portfolio basis and not per registration statement filed with the Commission. Based on the staff's experience with Form N–1A, we estimate that there are approximately 1.75 portfolios per registration statement filed on Form N–1A. The average hour burden per portfolio for disclosing the information about directors will be the hour burden per registration statement (42) divided by the average number of portfolios per registrant (1.75), or 24 hours per portfolio.[140] Because mutual funds only have to update information in post-effective amendments, we expect the hour burden to be ⅙ of the hours expended for the initial registration statement, or 4 hours per portfolio for post-effective amendments.[141]

In the Proposing Release, we estimated that 280 portfolios file initial registration statements and 7,875 portfolios file post-effective amendments annually on Form N–1A.[142] Thus, we estimate the annual industry cost of the amendments to Form N–1A to be 38,220 hours, or $4.78 million.[143]

Form N–2

The hour burden for Form N–2 is on a per registration statement basis because funds registering on Form N–2 register one portfolio per registration statement. Because the disclosure will be the same for Form N–2 as for Form N–1A, except that it would be for one portfolio per registration statement, we estimated the additional hour burden for the proposed amendments to be 42 hours for each initial registration statement. Because funds only have to update information in post-effective amendments, we expect that the hour burden to be approximately ⅙ of the hours expended for the initial registration statement, or 7 hours per post-effective amendment.[144]

In the Proposing Release, we estimated that 110 funds file initial registration statements and 20 file post-effective amendments annually on Form N–2.[145] Thus, we estimate the annual industry cost of the amendments to Form N–2 to be 4,760 hours, or $595,000.[146]

Form N–3

The hour burden for Form N–3 is on a per portfolio basis and not per registration statement filed with the Commission. Based on the Commission staff's experience with Form N–3, we estimate that there are approximately 4 portfolios per investment company registering on Form N–3. The average hour burden per portfolio for disclosing the information about directors will be the hour burden per registration statement (42) divided by the approximate number of portfolios per registrant (4), or 10.5 hours per portfolio. Because funds only have to update information in post-effective amendments, we expect that the hour burden would be ⅙ of the hours expended for the initial registration statement, or 1.75 hours per portfolio for post-effective amendments.[147]

In the Proposing Release, we estimated that 20 portfolios file initial registration statements and 40 portfolios file post-effective amendments annually on Form N–3.[148] Thus, we estimate the annual industry cost of the amendments to Form N–3 to be 280 hours, or $35,000.[149]

Shareholder Reports

Because the disclosure of basic tabular information, which is required in annual shareholder reports, is a subset of the information that would be required in the initial registration statement of a fund and any post-effective amendments, we expect that the annual burden for complying with the proposed amendments to the shareholder report requirements would be minimal. Based upon the amount of information to be disclosed, we estimate that the hour burden would be one-half hour per investment company for each annual shareholder report. In the Proposing Release, we estimated that there were 3,490 management investment companies that are subject to the annual report requirements.[150] Thus, we estimate the annual industry cost of the proposed amendments for annual shareholder reports to be 1,745 hours, or $218,125.[151]

H. Recordkeeping Regarding Director Independence

The Commission also is amending rule 31a–2 under the Act, which requires funds to preserve certain records for specified periods of time. The amendments to rule 31a–2 require funds to preserve for a period of at least six years any record of: (i) The initial determination that a director qualifies as

statements filed with the Commission in calendar year 1998. The total industry cost of the proposed amendments to the proxy statement is calculated by multiplying the annual number of proxy statements (1,000) by the additional hour burden imposed by the proposed amendments (10 hours) by the hourly wage rate ($125). The hourly wage rate is based upon consultations with a sample of filers and represents the Commission's estimate for an appropriate wage rate for the legal, financial, and accounting skills commonly used in preparation of registration statements, shareholder reports, and proxy statements.

[140] Our estimated hour burden would be high for those portfolios that are part of a fund complex in which multiple registered investment companies have the same board of directors because the burden of collecting and disclosing information about the common board would be spread over a larger number of portfolios.

[141] Although funds only have to update the information about current directors and add information about new directors, we anticipate that funds will incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[142] These estimates were based on filings received in calendar year 1998.

[143] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((280 portfolios x 24 hours) + (7,875 portfolios x 4 hours)) by the hourly wage rate of $125.

[144] Although funds only have to update the information about current directors and add information about new directors, we anticipate that funds will incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[145] These estimates were based on filings received in calendar year 1998.

[146] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((110 funds x 42 hours) + (20 funds x 7 hours)) by the hourly wage rate of $125.

[147] Although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[148] These estimates were based on filings received in calendar year 1998.

[149] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((20 portfolios x 10.5 hours) + (40 portfolios x 1.75 hours)) by the hourly wage rate of $125.

[150] This estimate was based on statistics compiled by Division staff from January 1, 1997 through December 31, 1998.

[151] The industry cost of the proposed annual shareholder reporting requirements is calculated by multiplying the total annual hour burden for the industry (0.5 hours x 3,490 registered management investment companies) by the hourly wage rate of $125.

an independent director; (ii) each subsequent determination of whether the director continues to qualify as an independent director; and (iii) the determination that any person who is acting as legal counsel to the independent directors is an independent legal counsel. These amendments should benefit both shareholders and the Commission by enabling the Commission's staff to monitor the independent directors' determination of whether their counsel is independent.

The amendments will impose certain minimal costs on funds. The Commission staff estimates that each fund currently spends about 27.8 hours per year complying with the record preservation requirements of rule 31a–2.[152] Approximately 3,490 funds would be affected by the proposal to amend the rule to require funds to preserve records regarding the independence of their directors.[153] The Commission staff estimates that each of those funds would be required to spend an additional 0.2 hours annually to comply with the proposed amendment,[154] for a total additional burden for all funds of approximately 698 hours. Based on this estimate, the total annual cost for all funds of the proposed amendment to rule 31a–2 would be $36,100.[155] The estimated costs related to the determination of counsel's independence are discussed above in section IV.B. The Commission is not aware of any other costs that would result from the proposed amendments to rule 31a–2.

V. Effects on Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[156] The Commission has considered these factors.

Independent directors have significant responsibilities under the Investment Company Act and the Exemptive Rules. The new rules and amendments are intended to enhance the independence and effectiveness of independent directors so that they can perform these responsibilities capably and well. The new rules and rule amendments should promote capital formation by bolstering investors' confidence in the ability of independent directors to represent their interests effectively. When investors are confident that their interests are duly considered by those responsible for the operation of the mutual funds in which they invest, they are more likely to continue to rely on mutual funds as a vehicle for savings and investment. The new rules and rule amendments should promote efficiency and competition by enhancing the ability of fund independent directors to scrutinize fund operations and protect funds from inefficiencies inherent when a fund is operated to promote the interests of persons other than those who have invested in the fund.

As discussed above, shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information helps a fund shareholder to evaluate whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations. The disclosure amendments were designed to ensure that shareholders have the information necessary to make such evaluations.

It is unclear whether the disclosure amendments will promote the efficiency of funds since the disclosure amendments do not change the operation of funds. The disclosure amendments, however, may promote competition among funds since shareholders will now be better equipped to evaluate the effectiveness of fund boards among various funds before making their investment decisions. The disclosure amendments also may promote capital formation as the disclosure amendments may provide potential investors greater confidence to invest in funds knowing that the interests of the independent directors overseeing the funds are aligned with their own.

VI. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of Forms N–1A, N–2, and N–3, and rules 0–1, 20a–1, 30e–1, 31a–2, and 32a–4 under the Investment Company Act, and Schedule 14A under the Exchange Act contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520.]. We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

As discussed above, we are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors. Specifically, we are adopting disclosure amendments that will require funds to disclose: (1) Basic information about directors in an easy-to-read tabular format; (2) fund shares owned by directors; (3) conflicts of interest information regarding independent directors; and (4) information on the board's role in governing the fund.

A few commenters specifically addressed the burden hours the Commission estimated funds would incur to satisfy the proposed disclosure requirements, generally stating that these estimates were too low. These commenters, however, did not provide the Commission with any specific quantitative data regarding burden hours.[157] As discussed in the Proposing Release, the Commission staff estimated the burden hours that would be necessary under the proposed disclosure amendments by assessing a variety of factors.[158] After careful

[152] Commission staff surveyed representatives of several funds to determine the current burden hour estimate for rule 31a–2.

[153] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[154] This estimate is based on a Commission staff assessment of the hour burden that would be imposed by the proposed amendment in light of the estimated hour burden currently imposed by the requirements of the rule.

[155] In calculating the total annual industry cost of the proposed amendment, the Commission staff assumed that one-third of the total annual industry hour burden (233 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (465 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((233 x $125/hour) + (465 x $15/hour) = $36,100).

[156] 15 U.S.C. 80a–2(c), 77b(b), and 78c(f).

[157] One commenter did assert that an additional 250 hours would be required to convert the new disclosure requirements into ''plain English'' in order for funds to obtain accurate information from directors. In light of the modifications to the disclosure requirements discussed above, which simplified the disclosure requirements, we believe that our estimates remain appropriate.

[158] For example, in determining the burden hour for preparing proxy statements, we explained that the then current hour burden for preparing proxy statements was 96.2 hours per proxy statement, and we estimated that approximately ⅓ of those hours—or 32 hours—were expended collecting and disclosing information about directors and nominees. We estimated that an additional 10 burden hours per proxy statement would be imposed by the proposed disclosure requirements.

consideration of these comments, as well as the modifications made to the amendments as proposed, we continue to believe that our estimates are appropriate.[159]

The rule amendments we are adopting in this Release include amendments to the Exemptive Rules that are designed to enhance the independence and effectiveness of fund independent directors.[160] The changes also include new rules and rule amendments that will prevent qualified individuals from being unnecessarily disqualified from serving as independent directors, protect independent directors from the costs of legal disputes with fund management, permit the Commission to monitor the independence of directors by requiring funds to preserve records of their assessments of director independence, and temporarily suspend the independent director minimum percentage requirements if a fund falls below the required percentage due to an independent director's death or resignation. In addition, the Commission is exempting funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

In the Proposing Release, the Commission estimated the burden hours that would be necessary for the collection of information requirements under the proposed amendments to the rules under the Act. Although no commenters specifically addressed the burden estimates for the collection of information requirements, a few commenters responding to the cost-benefit analysis in the Proposing Release generally stated that we had underestimated the burden hours. These commenters, however, did not provide an estimate of the burden hours associated with the proposed rule changes. We continue to believe that the estimates of the burden hours contained in the Proposing Release are appropriate.[161]

OMB approved the collection requirements contained in the forms and rules. Forms N–1A (OMB Control No. 3235–0307), N–2 (OMB Control No. 3235–0026), and N–3 (OMB Control No. 3235–0316) were adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e]. Rule 0–1 was adopted pursuant to section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)]. Rule 20a–1 (OMB Control No. 3235–0158) and rule 30e–1 (OMB Control No. 3235–0025) were promulgated under sections 20(a) and 30(e) [15 U.S.C. 80a–20 and 80a–29], respectively, of the Investment Company Act. Rule 31a–2 (OMB Control No. 3235–0179) was adopted under sections 31 [15 U.S.C. 80a–30] and 38(a) of the Investment Company Act. Rule 32a–4 (Control No. 3235–0530) was adopted under sections 6(c) [15 U.S.C. 80a–6(c)] and 38(a) of the Investment Company Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential.

VII. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604. The Commission proposed new rules 2a19–3, 10e–1 and 32a–4, and amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, 30d–1, 30d–2, and 31a–2, and requested comments on the new rules and amendments in the Proposing Release. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release summarized the IRFA and solicited comments on it. No comments specifically addressed the IRFA.

A. Need for the Rules and Rule Amendments

1. Amendments to Exemptive Rules

Fund boards of directors have significant responsibilities to protect investors under state law, the Investment Company Act, and many of our rules. Independent directors, in particular, represent the interests of fund shareholders. They serve as ''independent watchdogs,'' guarding investor interests. We are amending certain Exemptive Rules to require that, for funds relying on those rules:

- Independent directors constitute a majority of the fund's board of directors;
- Independent directors select and nominate other independent directors; and
- Any legal counsel for the fund's independent directors be an ''independent legal counsel.''[162]

We also are adopting rules and rule amendments that will prevent qualified individuals from being unnecessarily disqualified from serving as independent directors, protect independent directors from the costs of legal disputes with fund management, permit us to monitor the independence of directors by requiring funds to keep records of their assessments of director independence, and temporarily suspend the independent director minimum percentage requirements if a fund falls below the required percentage due to an independent director's death or resignation. In addition, we are exempting funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund

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This estimate was based upon a Commission staff assessment of the proposed amendments in light of the then current hour burden and current reporting requirements. We explained that the additional hours were based on the additional time funds would devote to determining what information needs to be disclosed and preparing the disclosure documents.

[159] We note that since issuing the Proposing Release, the Commission issued a proposal on Disclosure of Mutual Fund After-Tax Returns, Investment Company Act Release No. 24339 (March 15, 2000) [65 FR 15500 (March 22, 2000)]. The proposal would result in an increase in burden hours of 109,591 for Form N–1A and 17,100 burden hours for rule 30e–1 due to the proposed amendments relating to after-tax disclosure.

[160] These amendments require that, for funds relying on any of the Exemptive Rules, (i) independent directors constitute a majority of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the independent directors be an independent legal counsel. In connection with these amendments, we also are amending rule 0–1 under the Act to add definitions of the terms ''independent legal counsel'' and ''administrator.''

[161] The Commission continues to estimate that the addition of the definition of the term ''independent legal counsel'' to rule 0–1 will require the independent directors of approximately 1,065 funds to spend, on average, 0.75 hours annually to determine whether their counsel meets the definition of ''independent legal counsel,'' for a total annual burden of approximately 799 hours. *See* Proposing Release, *supra* note 3, at nn.287–290 and accompanying text.

In addition, the Commission estimates that the amendments to rule 31a–2, which require funds to preserve records regarding the independence of their directors and counsel, will require approximately 3,490 investment companies to spend an additional 0.2 hours annually to comply with the collection of information requirements of rule 31a–2, for a total additional burden for all funds of approximately 698 hours. *See* Proposing Release, *supra* note 3, at nn.310–312 and accompanying text.

The Commission also estimates that new rule 32a–4, which provides an exemption from the requirement in section 32(a)(2) of the Act that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection, will be relied upon by approximately 524 funds, for a total one-time burden of 2,096 hours and an additional annual hour burden of 105 hours. *See* Proposing Release, *supra* note 3, at nn.313–314 and accompanying text.

[162] In connection with the adoption of this requirement, we also are defining the term ''independent legal counsel.''

establishes an audit committee composed entirely of independent directors.

2. Disclosure Requirements

In reevaluating our current disclosure requirements about fund directors, we concluded that, while our fundamental approach has been sound, there are several gaps in the information that shareholders currently receive about directors. We are, therefore, requiring that funds provide better information about directors, including:

- Basic information about the identity and business experience of directors;
- Fund shares owned by directors;
- Information about directors that may raise conflict of interest concerns; and
- The board's role in governing the fund.

We are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors.

B. Significant Issues Raised by Public Comment

The Commission requested comment on the IRFA, but we received no comments specifically addressing the analysis. Several commenters, however, asserted that the financial costs of the amendments to the rules under the Act would have a greater impact on funds that are small entities. Those commenters did not, however, provide an estimate of the costs to small entities. A few commenters stated that the disclosure amendments, as proposed, would disadvantage smaller funds.

Two commenters argued that the proposed fund ownership disclosure would disadvantage directors of smaller funds as these funds are more likely to be stand-alone funds or part of a fund complex with fewer funds, thereby reducing the likelihood that such funds would meet directors' particular investment objectives. We have addressed this concern by modifying the proposal to require that funds disclose each director's ownership in each fund that he oversees and each director's aggregate ownership in any funds that he oversees within a his fund family. Although we understand that directors of smaller funds will still have fewer funds from which to choose, limiting fund ownership disclosure to those funds that a director oversees within the same complex should help reduces the disadvantage to directors of smaller funds and still provide investors with information to assess whether a director's interests are aligned with their own..

We also narrowed the scope of immediate family members and related persons in recognition of the overbreadth of our proposal in certain circumstances, which should alleviate concerns that the conflicts of interest disclosure requirements would discourage directors from serving on fund boards.

C. Small Entities Subject to the Rules

As of December 1999, approximately 299 funds met the Commission's definition of small entity for purposes of the Investment Company Act.[163]

The amendments to the Exemptive Rules will affect funds, including any small entities that rely on the Exemptive Rules and do not already meet the new conditions to those rules. Although it appears that funds may incur certain costs in complying with those conditions, the Commission does not have a reasonable basis for estimating those costs. Other rule amendments are not expected to have a significant economic impact on funds, including those that are small entities.

As discussed above, we are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors. In doing so, we have narrowed the scope of the disclosure requirements that were proposed and that would have applied to small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Investment Company Act Rule Amendments

The amendment to rule 17d–1(d)(7), and new rules 10e–1 and 2a19–3, will not impose any new reporting, recordkeeping or compliance requirements. The amendments to the Exemptive Rules also will not impose any new reporting or recordkeeping requirements, but will impose three new compliance requirements. For funds relying on the Exemptive Rules, the amendments require that: (i) Independent directors constitute a majority of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the fund's independent directors be an independent legal counsel. Although it appears that there may be certain costs to funds, including those that are small entities, associated with complying with these requirements, the Commission does not have a reasonable basis for estimating those costs.

2. Disclosure Amendments

As noted in our Paperwork Reduction Act Analysis, a few commenters argued that we had underestimated the costs of complying with the proposed rules and amendments.[164] In addition, several commenters stated that compliance with the proposed rules and amendments would have a greater impact on small entities. However, none of the commenters provided an estimate of the impact on small entities, and how it would differ from the impact on larger entities.

E. Agency Action to Minimize Effects on Small Entities

1. Investment Company Act Rule Amendments

With respect to the amendments to the rules under the Act, we believe that establishing different requirements that are applicable specifically to small entities is inconsistent with the protection of investors. We also believe that adjusting the new rules and rule amendments to establish different compliance requirements for small entities could undercut the purpose of the changes: to enhance the effectiveness of independent directors of all funds, and thus better enable those directors to fulfill their role of protecting shareholder interests.

2. Disclosure Amendments

With respect to the disclosure requirements, the Commission believes that special compliance or reporting requirements for small entities would not be appropriate or consistent with investor protection. The disclosure amendments give shareholders and the public greater access to information about directors. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide shareholders, would create the risk that shareholders would not receive adequate information about their independent directors. The Commission believes it is important for shareholders and the public to receive this information about directors for all funds, not just for funds that are not considered small entities. Shareholders in small funds should have information about their directors and would benefit

[163] We note that few, if any, insurance company separate accounts registered on Form N–3 have assets of less than $50 million when separate account assets are aggregated with the assets of the sponsoring insurance company.

[164] *See supra* note and accompanying text.

from this information as much as shareholders in larger funds.

Consolidating or simplifying compliance requirements for small entities or exempting small entities from any or all of the disclosure requirements would be inconsistent with the Securities Act, the Exchange Act, the Investment Company Act, and investor protection. If we do not require certain information for small entities, this could create the risk that investors in small funds might not receive important information about their directors. The Commission also notes that current disclosure requirements in the proxy statements and registration statements do not distinguish between small entities and other funds. In addition, the Commission believes it would be inappropriate to impose a different timetable on small entities for complying with the requirements.

The Commission believes that the amendments will not adversely affect small entities. The new disclosure requirements modify the existing disclosure requirements in proxy statements and registrations statements. In addition, the Commission believes that any additional impact on small entities will be outweighed by the benefits to shareholders and the public of having greater access to the information. Further consolidation or simplification of disclosure requirements for small entities, or use of performance standards to specify different requirements for small entities would not be consistent with the objectives of the Investment Company Act.

The FRFA is available for public inspection in File No. S7–23–99, and a copy may be obtained by contacting Peter M. Hong, Special Counsel, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

VIII. Statutory Authority

The Commission is adopting rules 2a19–3, 10e–1, and 32a–4, and amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, 30d–1, 30d–2, and 31a–2 pursuant to authority set forth in sections 6(c), 10(e), 30(e), 31, and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–10(e), 80a–29(e), 80a–30, 80a–37(a)]. The Commission is adopting amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–37]. The Commission is adopting amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–37].

List of Subjects

17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Final Rules and Forms

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.14a–101 is amended as follows:

a. Redesignating paragraphs (e) and (d) of Item 7 as paragraphs (d) and (e) of Item 7;

b. In newly redesignated paragraph (d)(1) of Item 7, removing the third and fourth sentence;

c. In newly redesignated paragraph (d)(3)(iv)(A)(*2*) of Item 7, revise the phrase ''paragraph (e)(3)(iv)(A)(2)'' to read ''paragraph (d)(3)(iv)(A)(*2*)'';

d. In newly redesignated paragraphs (d)(3)(v), (d)(3)(vi) and (d)(3)(vii) of Item 7, revise the phrase ''paragraph (e)(3)'' to read ''paragraph (d)(3)'';

e. Revising newly redesignated paragraph (e) of Item 7;

f. Revising Item 8(d), before the Instruction, revising ''Item 22(b)(6)'' to read ''Item 22(b)(13)'';

g. In the Instruction following Item 10(a)(2)(ii)(A), revising ''Item 22(b)(6)'' to read ''Item 22(b)(13)'';

h. In the Instruction following Item 10(b)(1)(ii), revising ''Item 22(b)(6)(ii)'' to read ''Item 22(b)(13)'';

i. Revising paragraph (a)(1)(i) of Item 22;

j. In Item 22, redesignating paragraphs (a)(1)(iv), (v), (vi), (vii), and (viii) as paragraphs (a)(1)(v), (vi), (ix), (x), and (xii);

k. In Item 22, adding new paragraphs (a)(1)(iv), (vii), (viii), and (xi);

l. In Item 22, revising newly designated paragraph (a)(1)(x); and

m. Revising paragraph (b) of Item 22.

These additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers

* * * * *

(e) In lieu of paragraphs (a) through (d)(2) of this Item, investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) must furnish the information required by Item 22(b) of this Schedule 14A.

* * * * *

Item 22. Information required in investment company proxy statement.

(a) * * *

(1) * * *

(i) *Administrator.* The term ''Administrator'' shall mean any person who provides significant administrative or business affairs management services to a Fund.

* * * * *

(iv) *Family of Investment Companies.* The term ''Family of Investment Companies'' shall mean any two or more registered investment companies that:

(A) Share the same investment adviser or principal underwriter; and

(B) Hold themselves out to investors as related companies for purposes of investment and investor services.

* * * * *

(vii) *Immediate Family Member.* The term ''Immediate Family Member'' shall mean a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(viii) *Officer.* The term ''Officer'' shall mean the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

* * * * *

(x) *Registrant.* The term ''Registrant'' shall mean an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(xi) *Sponsoring Insurance Company.* The term ''Sponsoring Insurance Company'' of a Fund that is a separate account shall mean the insurance company that establishes and maintains the separate account and that owns the assets of the separate account.

* * * * *

(b) *Election of Directors.* If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to the information (and in the format) required by

paragraphs (f) and (g) of Item 7 of Schedule 14A.

Instructions to introductory text of paragraph (b). 1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made by or on behalf of a person other than the Fund or an investment adviser of the Fund, provide information only as to nominees of the person making the solicitation.

3. When providing information about directors and nominees for election as directors in response to this Item 22(b), furnish information for directors or nominees who are or would be ''interested persons'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) separately from the information for directors or nominees who are not or would not be interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors and nominees who are or would be interested persons and for directors or nominees who are not or would not be interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors or nominees who are or would be interested persons and the directors or nominees who are not or would not be interested persons.

4. No information need be given about any director whose term of office as a director will not continue after the meeting to which the proxy statement relates.

(1) Provide the information required by the following table for each director, nominee for election as director, Officer of the Fund, person chosen to become an Officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age.	Position(s) Held with Fund.	Term of Office and Length of Time Served.	Principal Occupation(s) During Past 5 Years.	Number of Portfolios in Fund Complex Overseen by Director or Nominee for Director.	Other Directorships Held by Director or Nominee for Director

Instructions to paragraph (b)(1). 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. No nominee or person chosen to become a director or Officer who has not consented to act as such may be named in response to this Item. In this regard, see Rule 14a–4(d) under the Exchange Act (§ 240.14a–4(d)).

3. If fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

4. For each director or nominee for election as director who is or would be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director or nominee is or would be an interested person.

5. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

6. Include in column (5) the total number of separate portfolios that a nominee for election as director would oversee if he were elected.

7. Indicate in column (6) directorships not included in column (5) that are held by a director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*), or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or any company registered as an investment company under the Investment Company Act of 1940, (15 U.S.C. 80a), as amended, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same Fund Complex, identify the Fund Complex and provide the number of portfolios overseen as a director in the Fund Complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (b)(1) of this Item, except for any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction to paragraph (b)(2). When an individual holds the same position(s) with two or more registered investment companies that are part of the same Fund Complex, identify the Fund Complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director, nominee for election as director, Officer, or person chosen to become an Officer, and any other person(s) (naming the person(s)) pursuant to which he was or is to be selected as a director, nominee, or Officer.

Instruction to paragraph (b)(3). Do not include arrangements or understandings with directors or Officers acting solely in their capacities as such.

(4) Unless disclosed in the table required by paragraph (b)(1) of this Item, describe any positions, including as an officer, employee, director, or general partner, held by any director or nominee for election as director, who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(iii) An investment adviser, principal underwriter, Sponsoring Insurance Company, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instruction to paragraph (b)(4). When an individual holds the same position(s) with two or more portfolios that are part of the same Fund Complex, identify the Fund Complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(5) For each director or nominee for election as director, state the dollar range of equity securities beneficially owned by the director or nominee as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen or to be overseen by the director or nominee within the same Family of Investment Companies as the Fund.

(1)	(2)	(3)
Name of Director or Nominee.	Dollar Range of Equity Securities in the Fund.	Aggregate Dollar Range of Equity Securities in All Funds Overseen or to be Overseen by Director or Nominee in Family of Investment Companies

Instructions to paragraph (b)(5). 1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (§ 240.16a–1(a)(2)).

3. If action is to be taken with respect to more than one Fund, disclose in column (2) the dollar range of equity securities beneficially owned by a director or nominee in each such Fund overseen or to be overseen by the director or nominee.

4. In disclosing the dollar range of equity securities beneficially owned by a director or nominee in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(6) For each director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19), and his Immediate Family Members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director or Nominee.	Name of Owners and Relationships to Director or Nominee.	Company	Title of Class	Value of Securities	Percent of Class

Instructions to paragraph (b)(6). 1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (§§ 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director, nominee, or Immediate Family Member of the director or nominee owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company, describe the company's relationship with the investment adviser, principal underwriter, or Sponsoring Insurance Company.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director (or nominee) and his Immediate Family Members.

(7) Unless disclosed in response to paragraph (b)(6) of this Item, describe any direct or indirect interest, the value of which exceeds $60,000, of each director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instructions to paragraph (b)(7). 1. A director, nominee, or Immediate Family Member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director (or nominee) and the interests of his Immediate Family Members should be aggregated in determining whether the value exceeds $60,000.

(8) Describe briefly any material interest, direct or indirect, of any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, in any transaction, or series of similar transactions, since the beginning of the last two completed fiscal years of the Fund, or in any currently proposed transaction, or series of similar transactions, in which the amount involved exceeds $60,000 and to which any of the following persons was or is to be a party:

(i) The Fund;

(ii) An Officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(iv) An Officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(v) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vi) An Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(viii) An Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instructions to paragraph (b)(8). 1. Include the name of each director, nominee, or Immediate Family Member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director, nominee, or Immediate Family Member of the director or nominee without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the

earliest date of any series covered by the proxy statement.

7. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (b)(8) of this Item where the interest of the director, nominee, or Immediate Family Member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, and the transaction is not material to the company.

8. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

9. No information need be given as to any transaction where the interest of the director, nominee, or Immediate Family Member arises solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and the director, nominee, or Immediate Family Member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

10. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

11. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(9) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Fund, or is currently proposed, with any of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(ii) Provision of legal services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(9)(i) through (b)(9)(iii) of this Item.

Instructions to paragraph (b)(9). 1. Include the name of each director, nominee, or Immediate Family Member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director, nominee, or Immediate Family Member and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item as a result of the relationship since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

5. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect relationship by reason of the position, relationship, or interest.

6. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director (or nominee) should be aggregated with those of his Immediate Family Members.

7. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item has a relationship; the name of the director, nominee, or Immediate Family Member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

8. In calculating payments for property and services for purposes of paragraph (b)(9)(i) of this Item, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

9. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(10) If an Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, or an Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, serves, or has served since the beginning of the last two completed fiscal years of the Fund, on the board of directors of a company where a director of the Fund or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, is, or was since the beginning of the last two completed fiscal years of the Fund, an Officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii)The investment adviser, principal underwriter, or Sponsoring Insurance Company or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or Sponsoring Insurance Company where the individual named in paragraph (b)(10)(ii) of this Item holds or held office and the office held; and

(iv) The director of the Fund, nominee for election as director, or Immediate Family Member who is or was an Officer of the company; the office held; and the period of holding the office.

Instruction to paragraph (b)(10). If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a) and (c), and 405 of Regulation S–K (§§ 229.401(f) and (g), 229.404(a) and (c), and 229.405 of this chapter).

Instruction to paragraph (b)(11). Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Items 404(a) and (c) of Regulation S–K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

(12) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(13) For all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons''):

(i) Furnish the information required by the following table for the last fiscal year:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position.	Aggregate Compensation From Fund.	Pension or Retirement Benefits Accrued as Part of Fund Expenses.	Estimated Annual Benefits Upon Retirement.	Total Compensation From Fund and Complex Paid to Directors

Instructions to paragraph (b)(13)(i). 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (b)(13)(i) of this Item pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under any plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(iii) With respect to each Compensated Person, business development companies must include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S–K (§§ 229.402(b)(2)(iv) and 229.402(c) of this chapter).

(14) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 270 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

Section 270.10e–1 is also issued under 15 U.S.C. 80a–10(e);

Section 270.17a–8 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a);

Section 270.17d–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), and 80a–37(a);

Section 270.17e–1 is also issued under 15 U.S.C. 80a–6(c), 80a–30(a), and 80a–37(a);

Section 270.17g–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), 80a–17(g), and 80a–37(a);

Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78n, 78o(d), 78w(a), 80a–8, 80a–29, and 80a–37;

Section 270.31a–2 is also issued under 15 U.S.C. 80a–30.

* * * * *

§§ 270.17a–8, 270.17d–1, 270.17e–1 [Amended]

4. The authority citations following §§ 270.17a–8, 270.17d–1, 270.17e–1, 270.17g–1, 270.30d–1, and 270.31a–2 are removed.

5. Section 270.0–1 is amended by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 270.0–1 Definition of terms used in this part.

(a) * * *

(5) The term *administrator* means any person who provides significant administrative or business affairs management services to an investment company.

(6)(i) A person is an *independent legal counsel* with respect to the directors who are not interested persons of an investment company (''disinterested directors'') if:

(A) A majority of the disinterested directors reasonably determine in the exercise of their judgment (and record the basis for that determination in the minutes of their meeting) that any representation by the person of the company's investment adviser, principal underwriter, administrator (''management organizations''), or any of their control persons, since the beginning of the fund's last two completed fiscal years, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of the person in providing legal representation to the disinterested directors; and

(B) The disinterested directors have obtained an undertaking from such person to provide them with information necessary to make their determination and to update promptly that information when the person begins to represent, or materially increases his representation of, a management organization or control person.

(ii) The disinterested directors are entitled to rely on the information obtained from the person, unless they know or have reason to believe that the information is materially false or incomplete. The disinterested directors must re-evaluate their determination no less frequently than annually (and record the basis accordingly), except as provided in paragraph (iii) of this section.

(iii)After the disinterested directors obtain information that the person has begun to represent, or has materially increased his representation of, a management organization (or any of its control persons), the person may continue to be an independent legal counsel, for purposes of paragraph (a)(6)(i) of this section, for no longer than three months unless during that period the disinterested directors make a new determination under that paragraph.

(iv) For purposes of paragraphs (a)(6)(i)–(iii) of this section:

(A) The term *person* has the same meaning as in section 2(a)(28) of the Act (15 U.S.C. 80a–2(a)(28)) and, in addition, includes a partner, co-member, or employee of any person; and

(B) The term *control person* means any person (other than an investment company) directly or indirectly controlling, controlled by, or under common control with any of the investment company's management organizations.

* * * * *

§ 270.2a19–1 [Removed and reserved]

6. Section 270.2a19–1 is removed and reserved.

7. Section 270.2a19–3 is added to read as follows:

§ 270.2a19–3 Certain investment company directors not considered interested persons because of ownership of index fund securities.

If a director of a registered investment company (''Fund'') owns shares of a registered investment company (including the Fund) with an investment objective to replicate the performance of one or more broad-based securities indices (''Index Fund''), ownership of the Index Fund shares will not cause the director to be considered an ''interested person'' of the Fund or of the Fund's investment adviser or principal underwriter (as defined by section 2(a)(19)(A)(iii) and (B)(iii) of the Act (15 U.S.C. 80a–2(a)(19)(A)(iii) and (B)(iii)).

8. Section 270.10e–1 is added to read as follows:

§ 270.10e–1 Death, disqualification, or bona fide resignation of directors.

If a registered investment company, by reason of the death, disqualification, or bona fide resignation of any director, does not meet any requirement of the Act or any rule or regulation thereunder regarding the composition of the company's board of directors, the operation of the relevant subsection of the Act, rule, or regulation will be suspended as to the company:

(a) For 90 days if the vacancy may be filled by action of the board of directors; or

(b) For 150 days if a vote of stockholders is required to fill the vacancy.

9. Section 270.10f–3 is amended by redesignating paragraph (b)(11) as paragraph (b)(12), and adding new paragraph (b)(11) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) * * *

(11) *Board Composition, Selection, and Representation:*

(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

10. Section 270.12b–1 is amended by revising paragraph (c) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if:

(1) A majority of the directors of the company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel;

* * * * *

11. Section 270.15a–4 is amended by:

a. Removing the word ''and'' at the end of paragraph (b)(2)(v);

b. Removing the period at the end of paragraph (b)(2)(vi)(C)(2) and adding in its place ''; and''; and

c. Adding paragraph (b)(2)(vii) to read as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

* * * * *

(b) * * *

(2) * * *

(vii)(A) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

12. Section 270.17a–7 is amended by:

a. Removing the ''and'' at the end of paragraph (e)(3);

b. Redesignating paragraph (f) as paragraph (g); and

c. Adding new paragraph (f) to read as follows:

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

* * * * *

(f)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

13. Section 270.17a–8 is amended by:

a. Removing the '', and'' at the end of paragraph (a)(2) and in its place adding a semi-colon;

b. Removing the period at the end of paragraph (b) and adding in its place ''; and''; and

c. Adding new paragraph (c) to read as follows:

§ 270.17a–8 Mergers of certain affiliated investment companies.

* * * * *

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

14. Section 270.17d–1 is amended by:

a. Removing the word ''and'' at the end of paragraph (d)(7)(ii);

b. Redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(iv);

c. Removing the period at the end of newly designated paragraph (d)(7)(iv) and adding in its place ''; and''; and

d. Adding new paragraphs (d)(7)(iii) and (d)(7)(v) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(7) * * *

(iii) The joint liability insurance policy does not exclude coverage for bona fide claims made against any director who is not an interested person of the investment company, or against the investment company if it is a co-defendant in the claim with the disinterested director, by another person insured under the joint liability insurance policy;

* * * * *

(v)(A) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

15. Section 270.17e–1 is amended by:

a. Removing the word ''and'' at the end of paragraph (b)(3);

b. Redesignating paragraph (c) as paragraph (d); and

c. Adding new paragraph (c) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

16. Section 270.17g–1 is amended by revising paragraph (j) to read as follows:

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

* * * * *

(j) Any joint insured bond provided and maintained by a registered management investment company and one or more other parties shall be a transaction exempt from the provisions of section 17(d) of the Act (15 U.S.C. 80a–17(d)) and the rules thereunder, if:

(1) The terms and provisions of the bond comply with the provisions of this section;

(2) The terms and provisions of any agreement required by paragraph (f) of this section comply with the provisions of that paragraph; and

(3)(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

17. Section 270.18f–3 is amended by redesignating paragraph (e) as paragraph (f), and adding new paragraph (e) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(e)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

18. Section 270.23c–3 is amended by revising paragraph (b)(8) to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

* * * * *

(b) * * *

(8)(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

§ 270.30d–1 [Redesignated as § 270.30e–1]

19. a. Redesignate § 270.30d–1 as § 270.30e–1;

b. In newly designated § 270.30e–1, in paragraph (a), revise ''financial statements'' to read ''information''; and

c. Revise paragraph (d) to read as follows:

§ 270.30e–1 Reports to stockholders of management companies.

* * * * *

(d) An open-end company may transmit a copy of its currently effective prospectus or Statement of Additional Information, or both, under the Securities Act, in place of any report required to be transmitted to shareholders by this section, provided that the prospectus or Statement of Additional Information, or both, include all the information that would otherwise be required to be contained in the report by this section. Such prospectus or Statement of Additional Information, or both, shall be transmitted within 60 days after the close of the period for which the report is being made.

* * * * *

§ 270.30d–2 [Redesignated as § 270.30e–2]

20. Redesignate § 270.30d–2 as § 270.30e–2, and in newly designated § 270.30e–2:

a. Revise ''§ 270.30d–1'' in the first and second sentences of paragraph (a) to read ''§ 270.30e–1''; and

b. Revise ''§ 270.30d–1(f)'' in paragraph (b) to read ''§ 270.30e-1(f)''.

21. Section 270.31a–2 is amended by removing the period at end of paragraph (a)(3) and in its place adding a semi-colon, and adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company; and

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel.

* * * * *

22. Section 270.32a–4 is added to read as follows:

§ 270.32a–4 Independent audit committees.

A registered management investment company or a registered face-amount certificate company is exempt from the requirement of section 32(a)(2) of the Act (15 U.S.C. 80a–32(a)(2)) that the selection of the company's independent public accountant be submitted for

ratification or rejection at the next succeeding annual meeting of shareholders, if:

(a) The company's board of directors has established a committee, composed solely of directors who are not interested persons of the company, that has responsibility for overseeing the fund's accounting and auditing processes (''audit committee'');

(b) The company's board of directors has adopted a charter for the audit committee setting forth the committee's structure, duties, powers, and methods of operation or set forth such provisions in the fund's charter or bylaws; and

(c) The company maintains and preserves permanently in an easily accessible place a copy of the audit committee's charter and any modification to the charter.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

23. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

24. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–1A does not and these amendments will not appear in the *Code of Federal Regulations.*

25. Form N–1A (referenced in §§ 239.15A and 274.11A), is amended by:

a. In Item 13 by adding Instructions 1 and 2 before paragraph (a).

b. In Item 13 by removing paragraphs (a), (b), and (c) and adding paragraphs (a) and (b) in their place.

c. In Item 13 by redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

d. In Item 13 by removing ''executive'' from the first sentence of newly redesignated paragraph (c).

e. In Item 22 by adding paragraphs (b)(5) and (b)(6).

These additions and revisions read as follows:

Form N–1A

* * * * *

Item 13. Management of the Fund

Instructions

1. For purposes of this Item 13, the terms below have the following meanings:

(a) The term ''family of investment companies'' means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

(b) The term ''fund complex'' means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(c) The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(d) The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) *Management Information.*

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, address, and age.	Position(s) held with fund.	Term of office and length of time served.	Principal occupation(s) during past 5 years.	Number of portfolios in fund complex overseen by director.	Other directorships held by director.

Instructions. 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 13, except for any director who is not an interested person of the Fund, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction. Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) *Board of Directors.*

(1) Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws of the state or other jurisdiction in which the Fund is organized.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii)The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3) Unless disclosed in the table required by paragraph (a)(1) of this Item 13, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iii) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of director	Dollar range of equity securities in the fund	Aggregate dollar range of equity securities in all registered investment companies overseen by director in family of investment companies.

Instructions. 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.16a–1(a)(2)).

3. If the SAI covers more than one Fund or Series, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each Fund or Series overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(5) For each director who is not an interested person of the Fund, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class

Instructions. 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 13, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions. 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

(7) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(v) An investment adviser or principal underwriter of the Fund;

(vi) An officer of an investment adviser or principal underwriter of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions. 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (b)(7) of this Item 13 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(8) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Fund, or immediate family member of the director, that existed at any time during the two most recently completed calendar years with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 13.

Instructions. 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 13, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(9) If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph (b)(9)(ii) of this Item 13 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(10) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract.

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(5) The management information required by Item 13(a)(1).

(6) A statement that the SAI includes additional information about Fund directors

and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–2 does not and these amendments will not appear in the *Code of Federal Regulations*.

26. Form N–2 (referenced in §§ 239.14 and 274.11a-1) is amended by:

a. In Item 18 by adding Instructions 1 and 2 before paragraph 1.

b. In Item 18 by revising paragraphs 1 and 2.

c. In Item 18 by redesignating paragraphs 3 and 4 as paragraphs 4 and 14.

d. In Item 18 by adding paragraphs 3 and 5 through 13.

e. In Item 18, in newly designated paragraph 14, removing ''executive'' from the first sentence.

f. In Instruction 4 to Item 23 by removing ''and'' from the end of paragraph c.

g. In Instruction 4 to Item 23 by removing the period at the end of paragraph d. and in its place adding a semi-colon.

h. In Instruction 4 to Item 23 by adding paragraphs e. and f.

These additions and revisions read as follows:

Form N–2

* * * * *

Item 18. Management

Instructions: 1. For purposes of this Item 18, the terms below have the following meanings:

a. The term ''family of investment companies'' means any two or more registered investment companies that:

(i) Share the same investment adviser or principal underwriter; and

(ii) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term ''fund complex'' means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

d. The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age.	Position(s) Held with Registrant.	Term of Office and Length of Time Served.	Principal Occupation(s) During Past 5 years.	Number of Portfolios in Fund Complex Overseen by Director.	Other Directorships Held by Director.

Instructions: 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. Identify the standing committees of the Registrant's board of directors, and provide the following information about each committee:

(a) A concise statement of the functions of the committee;

(b) The members of the committee;

(c) The number of committee meetings held during the last fiscal year; and

(d) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(a) The Registrant;

(b) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3 (c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(c) An investment adviser, principal underwriter, or affiliated person of the Registrant; or

(d) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instruction: When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant.	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.16a–1(a)(2)).

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

8. For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions: 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(a) The Registrant;

(b) An officer of the Registrant;

(c) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(d) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(e) An investment adviser or principal underwriter of the Registrant;

(f) An officer of an investment adviser or principal underwriter of the Registrant;

(g) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant; or

(h) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions: 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10(a) through (h) of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10(a) through (h) of this Item 18. Relationships include:

(a) Payments for property or services to or from any person specified in paragraphs 10(a) through (h) of this Item 18;

(b) Provision of legal services to any person specified in paragraphs 10(a) through (h) of this Item 18;

(c) Provision of investment banking services to any person specified in paragraphs 10(a) through (h) of this Item 18, other than as a participating underwriter in a syndicate; and

(d) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11(a) through (c) of this Item 18.

Instructions: 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10(a) through (h) of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10(a) through (h) of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10(a) through (h) of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11(a) of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(a) The company;

(b) The individual who serves or has served as a director of the company and the period of service as director;

(c) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph 12(b) of this Item 18 holds or held office and the office held; and

(d) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

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Item 23. Financial Statements

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Instructions

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4. * * *

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–3 does not and these amendments will not appear in the *Code of Federal Regulations*.

27. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 20 adding instructions 1 and 2 before paragraph (a).

b. In Item 20 by revising paragraphs (a) and (b).

c. In Item 20 by redesignating paragraph (c) as paragraph (m).

d. In Item 20 by adding paragraphs (c) through (l).

e. In Item 20 by removing ''executive'' from the first sentence of newly designated paragraph (m).

f. In Instruction 4 to Item 27 by removing ''and'' from the end of paragraph (iii).

g. In Instruction 4 to Item 27 by removing the period at the end of paragraph (iv) and in its place adding a semi-colon.

h. In Instruction 4 to Item 27 by adding paragraphs (v) and (vi).

These additions, and revisions read as follows:

Form N–3

* * * * *

Item 20. Management

Instructions: 1. For purposes of this Item 20, the terms below have the following meanings:

a. The term ''family of investment companies'' means any two or more registered investment companies that:

(i) Share the same investment adviser or principal underwriter; and

(ii) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term ''fund complex'' means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

d. The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) Provide the information required by the following table for each member of the board of managers (''director'') and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, address, and age.	Position(s) held with registrant.	Term of office and length of time served.	Principal occupation(s) during past 5 years.	Number of portfolios in fund complex overseen by director.	Other directorships held by director.

Instructions: 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a–2(a)(19)), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item 20, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(c) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(d) Identify the standing committees of the Registrant's board of managers, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(e) Unless disclosed in the table required by paragraph (a) of this Item 20, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(i) The Registrant;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(iii) The Insurance Company or an investment adviser, principal underwriter, or affiliated person of the Registrant; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instruction: When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(f) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant.	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies.

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.16a–1(a)(2)).

3. If the SAI covers more than one sub-account, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each sub-account overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(g) For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class.

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter, describe the company's relationship with the Insurance Company, investment adviser, or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(h) Unless disclosed in response to paragraph (g) of this Item 20, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instructions: 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

(i) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(i) The Registrant;

(ii) An officer of the Registrant;

(iii)An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(v) The Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vi) An officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vii) A person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instructions: 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a

transaction with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (i) of this Item 20 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(j) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(ii) Provision of legal services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(iii) Provision of investment banking services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (j)(i) through (j)(iii) of this Item 20.

Instructions: 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (j)(i) of this Item 20, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(k) If an officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The Insurance Company, investment adviser, or principal underwriter or person controlling, controlled by, or under common control with the Insurance Company, investment adviser, or principal underwriter where the individual named in paragraph (k)(ii) of this Item 20 holds or held office and the office held; and

(iv) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(l) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of managers approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

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Item 27. Financial Statements

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Instructions

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4. * * *

(v) the management information required by paragraph (a) of Item 20; and

(vi) a statement that the SAI includes additional information about members of the board of managers of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for contract owners to call to request the SAI.

* * * * *

By the Commission.

Dated: January 2, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–536 Filed 1–12–01; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday,

January 16, 2001

Part V

Environmental Protection Agency

40 CFR Parts 9, 141, and 142

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1DBPR), and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[FRL–6925–7]

RIN 2040–AD43

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1DBPR), and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action will make minor revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) which were published December 16, 1998 and the Revisions to State Primacy Requirements to Implement Safe Drinking Water Act (SDWA) Amendments (Primacy Rule) published April 28, 1998. This final rule revises the compliance dates for the IESWTR and the Stage 1 DBPR so that they coincide with calendar quarters. This change will facilitate implementation of both rules. This action also extends the use of new analytical methods to compliance monitoring for long-standing drinking water regulations for total trihalomethanes. In addition, this document corrects typographical errors, replaces inadvertently deleted text, and clarifies some of the regulatory provisions found in the published rules. Lastly, this document contains minor corrections to the Primacy Rule. These regulations relate to the requirements and procedures for States to obtain primary enforcement authority (primacy) for the Public Water System Supervision (PWSS) program under the Safe Drinking Water Act as amended by the 1996 Amendments. At this time, EPA is not taking final action on the proposed changes to § 141.130(a)(1) (consecutive systems) and to § 141.174(b) (filtration sampling requirements). These changes will be considered in future rulemaking.

DATES: This regulation is effective on February 15, 2001. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on January 16, 2001.

ADDRESSES: Public comments, the comment/response document for the April 14, 2000 proposed rule, and applicable **Federal Register** documents are available for review at EPA's Drinking Water Docket: East Tower Basement, USEPA, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., EST, Monday through Friday, excluding legal holidays. The record for this rule has been established under docket number W–99–11. For access to docket materials, please call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities regulated by the IESWTR and Stage 1 DBPR, and thus by these revisions to those rules, are public water systems. These include community and noncommunity water systems. States are subject to the primacy rule requirements as revised.

Regulated categories and entities include the following:

Category	Examples of potentially regulated entities	SIC
State, Tribal, and Territorial Governments	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that operate public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511
Industry	Private operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511
Municipalities	Municipal operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2, 141.70, 141.130, 141.170, 142.2, 142.3, and 142.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations

CWS: Community water system
DBPR: Disinfectant and Disinfection Byproducts Rule
EPA: Environmental Protection Agency
GWUDI: Ground water under the direct influence of surface water
HAA5: Haloacetic Acids (monochloroacetic, dichloroacetic, trichloroacetic, monobromoacetic and dibromoacetic acids)
ICR: Information Collection Request
IESWTR: Interim Enhanced Surface Water Treatment Rule
MCL: Maximum contaminant level
MCLG: Maximum contaminant level goal
MRDL: Maximum residual disinfectant level
MRDLG: Maximum residual disinfectant level goal
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Non-transient, non-community water system
OMB: Office of Management and Budget
Primacy: Primary enforcement responsibility
PWS: Public water system
RFA: Regulatory Flexibility Analysis
SDWA: Safe Drinking Water Act
TNCWS: Transient, non-community water system
TOC: Total organic carbon
TTHM: Total Trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform)
UMRA: Unfunded Mandates Reform Act

Table of Contents

I. Background

On December 16, 1998, EPA published the final Interim Enhanced Surface Water Treatment Rule (IESWTR; 63 FR 69478) and Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR; 63 FR 69390). On April 28, 1998, EPA published the Revisions to State Primacy Requirements to Implement the SDWA Amendments (63 FR 23362). On April 14, 2000, EPA published revisions to the IESWTR, Stage 1 DBPR, and Primacy Rule as a direct final rule (65 FR 20304) and parallel proposed rule (65 FR 20314). On June 13, 2000, EPA withdrew the direct final rule (65 FR 37052) because of receipt of adverse comment and reopened the comment period on the proposed rule, at the request of numerous stakeholders, until July 13, 2000 (65 FR 37092).

IESWTR: The IESWTR was designed to improve control of microbial pathogens, including the protozoan *Cryptosporidium*, in drinking water and to address risk trade-offs with disinfection byproducts. The IESWTR builds upon the treatment technique requirements of the Surface Water Treatment Rule. Key provisions established in the final IESWTR include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log *Cryptosporidium* removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards and individual filter turbidity monitoring provisions; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of ground water under the direct influence of surface water (GWUDI) and additional avoidance criteria for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water and GWUDI systems regardless of size.

The IESWTR applies to public water systems that use surface water or GWUDI and serve 10,000 or more people, except that the rule requires primacy States to conduct sanitary surveys for all surface water and GWUDI systems regardless of size.

EPA believes that implementation of the IESWTR will significantly reduce the level of *Cryptosporidium* in finished drinking water supplies through improvements in filtration and reduce the likelihood of the occurrence of cryptosporidiosis outbreaks by providing an increased margin of safety against such outbreaks for some systems. In addition, the filtration provisions of the rule are expected to increase the level of protection from exposure to other pathogens (*i.e., Giardia* or other waterborne bacterial or viral pathogens).

Stage 1 DBPR: The Stage 1 DBPR was designed to reduce the levels of disinfection byproducts in drinking water supplies. The DBPR established maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; maximum contaminant level goals (MCLGs) for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and National Primary Drinking Water Regulations (NPDWRs) for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts (total trihalomethanes (TTHM)—a sum of chloroform, bromodichloromethane, dibromochloromethane, and bromoform; and haloacetic acids (HAA5)—the sum of dichloroacetic acid, trichloroacetic acid, monochloroacetic acid and mono- and dibromoacetic acids), and two inorganic disinfection byproducts (chlorite and bromate). The NPDWRs consist of maximum residual disinfectant levels (MRDLs) for these disinfectants and maximum contaminant levels (MCLs) or treatment techniques for their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds.

The Stage 1 DBPR applies to public water systems that are community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that treat water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs).

The Stage 1 DBPR provides public health protection for households that were not previously covered by drinking water rules for disinfection byproducts. The rule adds coverage for CWSs and NTNCWSs serving fewer than 10,000 persons. In addition, the rule, for the first time, provides public health protection from exposure to haloacetic acids, chlorite (a major chlorine dioxide byproduct) and bromate (a major ozone byproduct).

Primacy Rule: This rule codified new statutory requirements under the 1996 Amendments to the Safe Drinking Water Act (SDWA) involving changes to the process and requirements for States to obtain or retain primary enforcement authority for the Public Water System Supervision program under section 1413 of the SDWA and to the definition of a ''public water system'' under section 1401 of the SDWA.

II. Today's Action

A. IESWTR and Stage 1 DBPR

This document revises the IESWTR and Stage 1 DBPR to move compliance dates to facilitate implementation, correct typographical errors identified in these rules, replace text inadvertently deleted, delete incorrect text, and clarify certain provisions in the final rules. The revisions include the following modifications:

1. Shifting Compliance Date of Rules

Today's rule finalizes provisions in the April 14, 2000 proposed rule that revise the compliance dates of both rules by extending them approximately

two weeks. This shift will facilitate the implementation of the IESWTR and the Stage 1 DBPR as the monitoring periods for both rules will coincide with calendar quarters and consequently with the monitoring periods for other contaminants.

Summary of Comments and Response

There were no significant comments on shifting the compliance date of the rules and therefore EPA is finalizing this provision as proposed.

2. New Analytical Methods Use

Today's rule finalizes the proposed action modifying § 141.30 to extend the use of new analytical methods included in the DBPR § 141.131(b) for compliance monitoring for long-standing drinking water regulations at § 141.30 for total trihalomethanes.

Summary of Comments and Response

There were no significant comments on extending the use of analytical methods in the Stage 1 DBPR and therefore EPA is finalizing this provision as proposed.

3. Regulated Entities Compliance With Stage 1 DBPR

After evaluating the comments on the proposal, EPA is not taking final action at this time on the proposed changes to § 141.130(a). EPA proposed the change to § 141.130(a) to clarify which systems must meet the new MCLs and MRDLs under the Stage 1 DBPR. The current language specifies that systems which ''add a chemical disinfectant to the water in any part of the drinking water treatment process'' are responsible for complying with the rule. EPA proposed a clarification adding ''or systems which provide water that contains a chemical disinfectant.'' EPA intended to include all consecutive systems in the original rule making and included them in the regulatory impact analyses for the original rule. EPA will consider this issue in the future. The September 2000 Stage 2 M–DBP Agreement in Principle contains a recommendation at section 3.1.c. on ''Wholesale and Consecutive Systems'' that states:

''The FACA (Federal Advisory Committee Act group) has considered the issues of consecutive systems and recommends that EPA propose that all wholesale and consecutive systems must comply with the provisions of the Stage 2 DBPR on the same schedule required of the wholesale or consecutive system serving the largest population in the combined distribution system.

Principles:

• Consumers in consecutive systems should be just as well protected as customers of all systems, and

• Monitoring provisions should be tailored to meet the first principle.

The FACA recognizes that there may be issues that have not been fully explored or completely analyzed and therefore recommends that EPA solicit comments.''

Therefore, EPA plans to seek further comment on this issue in the proposal for the Stage 2 M–DBP rule making.

4. TTHM and HAA5 Monitoring and Compliance Provisions

The regulatory language addressing TTHM and HAA5 monitoring and compliance determination has been revised to clarify the intention of the regulatory requirements in § 141.132(b)(1). Sections a. through c. below discuss these revisions.

a. Criteria To Return to Routine Monitoring

This clarification specifies the criteria under which certain subpart H systems may return to routine monitoring from increased monitoring. The systems affected by this revision are those that use surface water or ground water under the direct influence of surface water serving <500 people and ground water systems serving <10,000 people on increased monitoring. Such systems are required to increase monitoring if the compliance sample or average of annual compliance samples, if more than one sample is taken, exceeds the MCL. The rule language in the 1998 Stage 1 DBPR omitted criteria that would govern returning to routine monitoring from increased monitoring. EPA proposed that systems on increased monitoring may return to routine monitoring if their TTHM annual average was 0.040 mg/L or less and their HAA5 annual average was 0.030 mg/L or less; these values are consistent with the criteria for reduced monitoring for other systems on quarterly monitoring. However, a number of commentors urged EPA to allow systems on increased monitoring to return to routine monitoring if their TTHM annual average is 0.060 mg/L or less and their HAA5 annual average is 0.045 mg/L or less; these values were discussed in the preamble to the 1998 rule. These are the same values that trigger systems to return to routine monitoring from reduced monitoring. EPA is persuaded by these commentors and is promulgating these criteria. A corresponding change is reflected in the table in § 141.132(b)(1). Also, the reference ''paragraph c'' in the third and fifth entries of the proposal will be replaced by ''paragraph (b)(1)(iv)'' in today's final rule.

b. MCL Exceedence Triggers Quarterly Monitoring

Today's rule finalizes the proposed action which clarifies the monitoring requirements for ground water systems serving <10,000 on reduced monitoring (one sample per plant every 3 years). As issued in 1998, there was concern that the Stage 1 DBPR language was ambiguous. The proposed rule clarified that in the situation where a sample collected during reduced monitoring exceeds the MCL, EPA's intention is to assure that the system would be triggered into quarterly monitoring immediately following the exceedence rather than first return to routine monitoring (one sample per plant per year).

Summary of Comments and Response

There were no significant comments on this clarification and therefore EPA is finalizing these revisions as proposed.

c. Compliance Criteria for Systems on Reduced Monitoring

EPA is finalizing the proposed clarification on compliance determination for TTHM and HAA5 in § 141.133(b)(1). The clarification deals specifically with systems monitoring less frequently than quarterly with TTHM or HAA5 sample results above the MCL. Compliance should not be calculated based solely on a sample taken at a frequency less than quarterly. The intention of the rule is that these systems should immediately begin quarterly monitoring. Compliance should be determined based on the results of four consecutive quarters of monitoring (averaging the sample results from the sample that triggered the increased monitoring and the following three quarters of monitoring). For systems with exceptionally high levels of DBPs, compliance could be calculated with fewer than four quarters of sampling results. (The exceptions to this are when the results of fewer than four quarters will cause the running annual average to exceed the MCL, or if the system fails to collect the four samples over four consecutive quarters, in which case the MCL is calculated based on the average of the available data for the four-quarter compliance period). This intent is clarified by deleting the last two sentences of § 141.133(b)(1)(i), revising paragraphs (b)(1) (ii) and (iii), and adding new paragraph (b)(1)(iv).

Summary of Comments and Responses

There were no significant comments on this clarification and therefore EPA is finalizing these revisions as proposed.

5. Chlorite Provisions

Today's rule finalizes the proposed revisions to two provisions addressing chlorite. First, EPA is correcting the general requirements for transient non-community water systems (TNCWS) in § 141.130 which incorrectly states that TNCWS must comply with chlorite requirements. This correction is accomplished by deletion of the chlorite reference in paragraph (b)(2).

Second, EPA is clarifying the monitoring provisions in § 141.131(b) for daily chlorite analysis. The Stage 1 DBPR of 1998 required analysis to be performed by a certified lab. Water system personnel, however, are capable of analyzing routine samples for chlorite using amperometric titration. Therefore, language has been added to allow public water system personnel to be approved for such monitoring. This change results in a reduction of the financial and operational burden on systems and will make data available immediately so that operational changes can be made on a more timely basis.

Summary of Comments and Response

There were no significant comments on modifications to the chlorite provisions and therefore EPA is finalizing these revisions as proposed.

6. Disinfection Byproduct Precursor Removal Provisions

This rule finalizes the proposed clarifications to the public notification requirements related to compliance with DBP precursor removal requirements under § 141.133. The revision to § 141.133(d) states that for systems required to meet Step 1 TOC removals, if the value calculated under § 141.135(c)(1)(iv) is less than 1.00, the system has a treatment technique violation and must notify the public.

Today's rule also finalizes proposed language clarifications regarding the Step 2 TOC removal requirements under § 141.135. The revision to the Step 2 TOC removal requirements clarifies that the submitted bench or pilot-scale tests must be used to determine the alternate enhanced coagulation level. In the table in § 141.135(b)(2), ''≤60–120'' is corrected to read ''>60–120'' in the heading of the second column and percentage signs—%—are added to all values while the word ''percent'' is deleted from the three column headings.

Summary of Comments and Response

There were no significant comments on the clarifications to the DBP precursors provisions in Stage 1 DBPR and therefore EPA is finalizing these revisions as proposed.

7. System Reporting and Recordkeeping

a. Reporting Requirement Added to the IESWTR

EPA is finalizing this provision as proposed. The revision adds system reporting requirements which were inadvertently omitted from § 141.175 of the IESWTR. These requirements mirror the reporting requirements in § 141.75 of the Surface Water Treatment Rule. Today's rule requires that when the combined filter effluent sample in a direct or conventional filtration system exceeds the maximum turbidity limit of 1 NTU, the system must inform the State no later than the end of the next business day. Similarly, when the combined filter effluent sample in a system using alternative filtration technologies exceeds the maximum turbidity level set by the State under § 141.173(b), the system must inform the State no later than the end of the next business day.

Summary of Comments and Response

While EPA received several comments supporting this revision, several other commentors disagreed with this correction and stated that the current reporting requirements were sufficient and that requiring systems to inform the State by the end of the next business day was excessive and unnecessary. Additionally, two commentors were unsure whether this requirement applied to individual or combined filter effluent samples.

After review of all comments, EPA has determined that the reporting requirement promulgated today is necessary and not an undue burden. Today's requirement simply parallels the Surface Water Treatment Rule's longstanding reporting requirement (5 NTU) but at the tighter maximum standard promulgated in the IESWTR. Also, a combined filter effluent turbidity above 1 NTU can be an indicator of significant operational or other problems in a water treatment plant. The State should be informed as quickly as possible so that action can be taken to minimize any threat to public health. The burden associated with today's reporting requirement is not expected to increase from the burden associated with the Surface Water Treatment Rule which is covered by the general PWSS program ICR (OMB No. 2040–0090). Even though § 141.175(c) alters (for large systems only) the level at which turbidity exceedences are reported, data indicate that large systems have high compliance rates and we do not expect a significant increase in violations and burden associated with this new level.

b. Clarification of Reporting Tables

Today's rule also adds clarifying text to the § 141.134 reporting tables. These changes will clarify a system's reporting requirements for the disinfectant byproducts, disinfectants, and disinfectant byproduct precursors and enhanced coagulation or enhanced softening.

In the section (b) table, all entries in the ''You must report'' column are revised to add the citation of the MCL and replace the word ''exceeded'' with ''violated.'' In the second entry, under the second reporting requirement, the phrase ''last quarter'' is replaced with ''last monitoring period,'' and in the fourth entry, the language in all four reporting requirements is revised. In the section (c) table, all entries in the ''You must report'' column are revised to add the citation of the MRDL and replace the word ''exceeded'' with ''violated.'' In the section (d) table, the first entry is revised by deleting the phrase ''prior to continuous disinfection'' from the first reporting requirement.

Summary of Comments and Response

Several comments expressed concern that these table revisions change the table format, thus creating inconsistency among the existing tables in § 141.134. EPA agrees with this comment and will work with the **Federal Register** to ensure consistency.

8. Filtration Provisions

Under the 1998 IESWTR, § 141.174 states that if continuous turbidity monitoring equipment fails, the system must repair or replace the equipment within five working days. In the April 14, 2000 **Federal Register**, EPA proposed that if a system did not make this repair, it would be assessed a violation. After evaluating the comments on the proposal, EPA is not taking final action on the proposed change at this time. EPA will consider this issue in future microbial rulemaking.

B. Primacy Rule

EPA is finalizing all the primacy rule clarifications as proposed. The final primacy regulations subject to these corrections increase the time for a State to adopt new or revised Federal regulations from 18 months to two years. Inadvertently, this time increase was not reflected in § 142.12(d)(2) of the final regulations. This rule corrects that error.

In addition, this rule updates the interim primacy provision at § 142.12(b)(3)(i). Interim primacy gives States full responsibility for implementation and enforcement during

the time that EPA reviews the complete and final primacy revision application, provided that States have full primacy for all prior National Primary Drinking Water Regulations. When extensions to the time frame for submission of primacy revision applications are granted, States must agree to conditions for rule implementation. These conditions are lifted when a State receives primacy. EPA believes that under the SDWA amendments, these conditions should also be lifted when a State receives interim primacy. Inadvertently, this intent was not reflected in the **Federal Register** of Tuesday, April 28, 1998 (63 FR 23362). Today's change to § 142.12(b)(3)(i) clarifies that the conditions that go with an extension are not necessary after a State receives interim primacy.

Summary of Comments and Response

There were no significant comments on corrections to the Primacy Rule and therefore EPA is finalizing these provisions as proposed.

III. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule makes minor revisions and corrections to three SDWA regulations. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, information collection, reporting and recordkeeping requirements must be submitted to the Office of Management and Budget (OMB) for approval. Information Collection Request (ICR) documents for the original IESWTR, Stage 1DBPR and Primacy Rule were prepared by EPA and approved by OMB (OMB Nos. 2040–0205, 2040–0204, and 2040–0915 respectively) and copies may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460, by e-mail at: farmer.sandy@epamail.epa.gov, or by calling: (202) 260–2740.

The system reporting requirements contained in § 141.175(c) are covered by the general PWSS program ICR (OMB No. 2040–0090). This ICR calculates the burden associated with reporting turbidity exceedences under § 141.75(a)(5). Although § 141.175(c) alters for large systems the level at which turbidity exceedences are reported, data indicate that such systems already have high compliance rates with the new levels and there would be no significant increase in violations and burden associated with this new level. The part 9 table is amended in this rule to reflect OMB approval of these reporting requirements.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility

analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. This rule makes only minor revisions, corrections, and clarifications to promulgated regulations that will facilitate the implementation of those regulations. This rule does not impose additional burden on any regulated small entity since impacts were included in the original rule analysis. The additional reporting requirements contained in today's rule apply only to systems that serve 10,000 or more people. Thus, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action extends the applicability of analytical methods established under the Stage 1 DBPR in the December 16, 1998 **Federal Register**. In developing the Stage 1 DBPR, EPA's process for selecting analytical test methods was consistent with section 12(d) of the NTTAA. EPA performed literature searches to identify analytical methods from industry, academia and voluntary consensus standards, and provided an opportunity for comment. For a more detailed discussion, refer to page 69457 of the Stage 1 DBPR (63 FR 69390, Dec. 16, 1998). Neither the IESWTR nor the Primacy Rule involve standards subject to this Act.

G. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898—''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) focuses Federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's changes to the IESWTR, Stage 1 DBPR, and Primacy Rule will not diminish the health protection to minority and low-income populations.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes only minor revisions, corrections and clarifications to three SDWA rules that were promulgated in 1998. The result of these revisions, corrections and clarifications will be to facilitate the implementation of these regulations at the State and local levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule makes minor revisions, corrections and clarifications to promulgated regulations. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 15, 2001.

List of Subjects in 40 CFR Parts 9, 141, and 142

Environmental protection, Analytical methods, Drinking water, Intergovernmental relations, Public utilities, Reporting and recordkeeping requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: December 22, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by removing the entry for § 141.174–141.175 in the table and adding new entries in its place to read as follows:

§ 9.1 [Amended]

* * * * *

40 CFR citation	*OMB control No.*
* * * * *	
141.174(a)–(b)	2040–0205
141.175	2040–0205
141.175(a)–(b)	2040–0205
141.175(c)	2040–0090
* * * * *	

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 141.12 [Amended]

4. Section 141.12 is amended by revising ''December 16, 2001'' to read ''December 31, 2001'' and by revising the two occurrences of ''December 16, 2003'' to read ''December 31, 2003''.

§ 141.30 [Amended]

5. Amend § 141.30 by:

a. Revising the first sentence of paragraph (e); and

b. In paragraph (h), revising ''December 16, 2001'' to read ''December 31, 2001'', and revising the two occurrences of ''December 16, 2003'' to read ''December 31, 2003''.

§ 141.30 Total trihalomethanes sampling, analytical and other requirements.

* * * * *

(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethanes methods as directed in § 141.24(e), and the *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766, or in § 141.131(b). * * *

* * * * *

§ 141.64 [Amended]

6. Amend § 141.64 by:

a. In paragraph (b)(1), revising ''December 16, 2001'' to read ''January 1, 2002'' and revising ''December 16, 2003'' to read ''January 1, 2004''; and

b. In paragraph (b)(2), revising ''December 16, 2003'' to read ''December 31, 2003''.

§ 141.65 [Amended]

7. Section 141.65, paragraphs (b)(1) and (b)(2) are amended by revising ''December 16, 2001'' to read ''January 1, 2002'' and revising ''December 16, 2003'' to read ''January 1, 2004'', wherever they appear.

§ 141.71 [Amended]

8. Section 141.71(b)(6) is amended by revising the two occurrences of ''December 17, 2001'' to read ''December 31, 2001''.

§ 141.73 [Amended]

9. Amend § 141.73 by:

a. In paragraph (a)(3), revising ''December 17, 2001'' to read ''January 1, 2002''; and

b. In paragraph (d), revising ''December 17, 2001'' to read ''January 1, 2002''.

§ 141.130 [Amended]

10. Amend § 141.130 by:

a. In paragraphs (b)(1) and (b)(2), revising ''December 16, 2001'' to read ''January 1, 2002'' and revising ''December 16, 2003'' to read ''January 1, 2004''; and

b. In paragraph (b)(2), removing the phrase ''and chlorite'' from the first and second sentences.

§ 141.131 [Amended]

11. Amend § 141.131 by revising the first sentence of paragraph (b)(2) and adding paragraph (b)(3) to read:

§ 141.131 Analytical requirements.

* * * * *

(b) * * *

(2) Analysis under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the State, except as specified under paragraph (b)(3) of this section. * * *

(3) A party approved by EPA or the State must measure daily chlorite samples at the entrance to the distribution system.

* * * * *

§ 141.132 [Amended]

12. Amend § 141.132 by:

a. In paragraph (a)(2), revising the reference ''§ 142.16(f)(5)'' to read ''§ 142.16(h)(5)'';

b. In paragraph (b)(1)(i), revising the third and fifth entries and footnote 2 in the table;

c. In paragraph (b), revising the last two sentences in paragraph (b)(1)(iii), redesignating paragraph (b)(1)(iv) as (b)(1)(v), adding a new paragraph (b)(1)(iv); and

d. In paragraph (c), revising the first sentence after the heading in paragraph (c)(1)(i).

The addition and revisions read as follows:

§ 141.132 Monitoring requirements.

* * * * *

(b) * * *

(1) * * *

(i) * * *

ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5

Type of system	Minimum monitoring frequency	Sample location in the distribution system
* *	* * *	* *
Subpart H system serving fewer than 500 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (b)(1)(iv) of this section.
* *	* * *	* *
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant[2] during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (b)(1)(iv) of this section.
* *	* * *	* *

[1] If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2] Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with State approval in accordance with criteria developed under § 142.16(h)(5) of this chapter.

(ii) * * *

(iii) * * * Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (b)(1)(i) of this section (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHM or HAA5 respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to the increased monitoring identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(iv) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring their TTHM annual average is ≤0.060 mg/L and their HAA5 annual average is ≤0.045 mg/L.

* * * * *

(c) * * *

(1) * * *

(i) *Routine Monitoring.* Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21. * * *

* * * * *

13. Amend § 141.133 by:

a. In the first sentence of paragraph (a)(1), revising ''system's failure'' to read ''system fails'';

b. In paragraph (b), removing the last two sentences of paragraph (b)(1)(i), revising paragraphs (b)(1) (ii) and (iii), and adding new paragraph (b)(1)(iv);

c. In paragraph (c), removing the phrase ''of quarterly averages'' in the second sentence of paragraph (c)(1)(i) and adding the phrase ''in addition to reporting to the State pursuant to § 141.134'' to the end of the second and third sentences in paragraph (c)(2)(i) and the second and third sentences of paragraph (c)(2)(ii); and

d. In paragraph (d), revising the reference ''§ 141.135(b)'' in the first sentence to read ''§ 141.135(c)'' and adding a sentence to the end of the paragraph.

The additions and revisions as follows

§ 141.133 Compliance requirements.

* * * * *

(b) * * *

(1) * * *

(ii) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of § 141.132(b)(1) does not exceed the MCLs in § 141.64. If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 or § 141.202, whichever is effective for your system, in addition to reporting to the State pursuant to § 141.134.

(iv) If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period must be

based on an average of the available data.

* * * * *

(d) * * * For systems required to meet Step 1 TOC removals, if the value calculated under § 141.135(c)(1)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134.

14. Amend § 141.134 by:

a. In paragraph (b), revising the table;

b. In paragraph (c), revising the table; and

c. In paragraph (d), revising the first entry in the table, designating the second entry in the first column as (2), and redesignating its corresponding entries in the second column as (i) through (ix).

The revisions read as follows:

§ 141.134 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

If you are a * * *	You must report * * *
(1) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) on a quarterly or more frequent basis.	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of all samples taken in the last quarter. (iv) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. (v) Whether, based on § 141.133(b)(1), the MCL was violated.
(2) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than quarterly (but as least annually).	(i) The number of samples taken during the last year. (ii) The location, date, and result of each sample taken during the last monitoring period. (iii) The arithmetic average of all samples taken over the last year. (iv) Whether, based on § 141.133(b)(1), the MCL was violated.
(3) System monitoring for TTHMs and HAA5 under the requriements of § 141.132(b) less frequently than annually.	(i) The location, date, and result of each sample taken (ii) Whether, based on § 141.133(b)(1), the MCL was violated.
(4) System monitoring for chlorite under the requirements of § 141.132(b).	(i) The number of entry point samples taken each month for the last 3 months. (ii) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (iii) For each month in the reporting period, the arithmetic average of all samples taken in each three samples set taken in the distribution system. (iv) Whether, based on § 141.133(b)(3), the MCL was violated, in which month, and how many times it was violated each month.
(5) System monitoring for bromate under the requirements of § 141.132(b).	(i)The number of samples taken during the last quarter. (ii)The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (iv) Whether, based on § 141.133(b)(2), the MCL was violated.

[1] The State may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information

(c) * * *

If you are a * * *	You must report * * *
(1) System monitoring for chlorine or chloramines under the requirements of § 141.132(c).	(i) The number of samples taken during each month of the last quarter. (ii) The month arithmetic average of all samples taken in each month for the last 12 months. (iii) The arithmetic average of the monthly averages for the last 12 months. (iv) Whether, based on § 141.133(c)(1), the MRD was violated.
(2) System monitoring for chlorine dioxide under the requirements of § 141.132(c).	(i) The dates, result, and locations of samples taken during the last quarter. (ii) Whether, based on § 141.133(c)(2), the MRDL was violated. (iii) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acuate or nonacute.

[1] The State may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) * * *

If you are a * * *	You must report * * *
(1) System monitoring monthly or quarterly for TOC under the requirements of § 141.132(d) and required to meet the enhanced coagulation or enhanced softening requirements in § 141.135(b)(2) or (3).	(i) The number of paired (source water and treated water) samples taken during the last quarter. (ii) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter. (iii) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. (iv) Calculations for determining compliance with the TOC prevent removal requirements, as provided in § 141.135(c)(1). (v) Whether the system is in compliance with the ehnanced coagulation or enhanced softening percent removal requirements in § 141.135(b) in § 141.135(b) for the last four quarters.
* * * * * * *	

[1] The State may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report taht information.

§ 141.135 [Amended]

15. Amend § 1A141.135 by:

a. In paragraph (a)(2)(iii), revising ''as required by'' in the first sentence to read ''according to'', and revising ''June 16, 2005'' in the third sentence to read ''June 30, 2005'';

b. In paragraph (b)(2), revising the table;

c. In paragraph (b)(4), removing the phrase ''(as aluminum)'' wherever it appears and revising the introductory text; and

d. In paragraph (c)(1), revising the table;

The revisions read as follows:

§ 141.135 Treatment technique for control of disinfection byproduct (DBP) precursors.

* * * * *

(b) * * *

(2) * * *

STEP 1 REQUIRED REMOVAL OF TOC BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [1] [2]

Source-water TOC, mg/L	Source-water alkalinity, mg/L as $CaCO_3$ (in precentages)		
	0–60	>60–120	>120 [3]
>2.0–4.0	35.0	25.0	15.0
>4.0–8.0	45.0	35.0	25.0
>8.0.	50.0	40.0	30.0

[1] Systems meeting at least one of the conditions in paragraph (a)(2)(i)–(vi) of this section are not required to operate with enhanced coagulation.

[2] Softening system meeting one of the alternative compliance criteria in paragraph (a)(3) of this section are not required to operate with enhanced softening.

[3] System practicing softening must meet the TOC removal requirements in this column.

(3) * * *

(4) *Alternate minimum TOC removal (Step 2) requirements.* Applications made to the State by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section must include, at a minimum, results of bench- or pilot-scale testing conducted under paragraph (b)(4)(i) of this section. The submitted bench- or pilot-scale testing must be used to determine the alternate enhanced coagulation level.

* * * * *

(c) * * *

(1) Subpart H systems other than those identified in paragraph (a)(2) or (a)(3) of this section must comply with requirements contained in paragraph (b)(2) or (b)(3) of this section. * * *

* * * * *

§ 141.170 [Amended]

16. Section 141.170(a) is amended in the introductory text by revising ''December 17, 2001'' to read ''January 1, 2002''.

§ 141.172 [Amended]

17. Amend § 141.172 by:

a. In paragraph (a)(2)(iii)(A), revising ''March 16, 2000'' to read ''March 31, 2000'';

b. In paragraph (a)(5), revising ''December 16, 1999'' to read ''December 31, 1999'' wherever it appears;

c. In paragraph (a)(5)(iii), revising ''March 16, 2000'' to read ''March 31, 2000'';

d. In the introductory text of paragraph (b)(2), revising ''March 16, 2000'' to read ''April 1, 2000'';

e. In paragraph (b)(3)(i), revising ''March 16, 2000'' to read ''March 31, 2000''; and

f. In paragraph (b)(4)(ii), revising the last sentence to read:

§ 141.172 Disinfection profiling and benchmarking.

* * * * *

(b) * * *

(4) * * *

(ii) * * * The $(CTcalc/CT_{99.9})$ value of each segment and $(\Sigma(CTcalc/CT_{99.9}))$ must be calculated using the method in paragraph (b)(4)(i) of this section.

* * * * *

§ 141.173 [Amended]

18.–19. In § 141.173, amend the introductory text by revising ''December 17, 2001'' to read ''December 31, 2001''.

§ 141.175 [Amended]

20. Amend § 141.175 by revising the two occurrences of ''December 17, 2001'' to read ''January 1, 2002'' in the introductory text and adding paragraph (c);

§ 141.175 Reporting and recordkeeping requirements

* * * * *

(c) *Additional reporting requirements.*

(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

(2) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the State under § 141.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

21. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300J–11.

22. In § 142.12, revise paragraph (b)(3)(i) and the last sentence of (d)(2), to read as follows:

§ 142.12 Revision of state programs

* * * * *

(b) * * *

(3) * * *

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until the State, if eligible for interim primacy, submits a complete and final primacy revision request to EPA, or in all other cases, until EPA approves the State program revision;

* * * * *

(d) * * *

(2) *Final request.* * * * Complete and final State requests for program revisions shall be submitted within two years of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section.

* * * * *

§ 142.15 [Amended]

23. In the first sentence of paragraph (c)(5), revise the reference ''§ 141.16(b)(3)'' to read ''§ 142.16(b)(3)''.

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Part VI

Environmental Protection Agency

40 CFR Parts 31 and 35
Environmental Program Grants for Tribes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

Environmental Program Grants for Tribes

40 CFR Parts 31 and 35

[FRL–6929–5]

RIN 2030–AA56

Environmental Program Grants for Tribes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule revises and updates requirements in several Environmental Protection Agency (EPA) regulations governing grants to Indian Tribes and Intertribal Consortia. It creates a new Tribal-specific subpart which contains only the provisions for environmental program grants that apply to Tribes; simplifies, clarifies, and streamlines current provisions for environmental program grants to Tribes; and addresses the Performance Partnership Grant (PPG) program for Tribes. The rule includes results-oriented approaches to planning and managing environmental programs. The PPG program fosters EPA's continuing efforts to improve partnerships with its Tribal recipients by increasing flexibility in using environmental program funding. The regulation reflects efforts by EPA and its Tribal partners to increase administrative and programmatic flexibility for Tribes while moving toward improved environmental protection. (A regulation governing environmental program grants to State, interstate, and local government agencies published in the **Federal Register** of January 9, 2001.)

DATES: This regulation is effective February 15, 2001. This regulation applies to new grants awarded after February 15, 2001.

ADDRESSES: Although this regulation is final, comments may be submitted to the person identified in the section below at any time.

FOR FURTHER INFORMATION CONTACT: Michelle McClendon, Grants Policy, Information, and Training Branch (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, D.C. 20460, Telephone: 202–564–5357, McClendon.Michelle@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the environmental grants listed in 40 CFR 35.501 are regulated by this rule. Regulated categories and entities include:

Category	Regulated Entities
Government	Federally recognized Indian Tribal Governments
Other Entities	Intertribal Consortia

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the definitions of Tribe and Intertribal Consortium in § 35.502 and in the program-specific rules found following § 35.540 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

The record of this final rule includes copies of the proposed and final rule, comments received on the rule, EPA's responses to those comments, and other relevant documents that support the rule. It is available for inspection from 9 am to 4 pm (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

III. Background

EPA proposed a rule for environmental program grants for Indian Tribes on July 23, 1999 (64 FR 40084). EPA received 16 letters of comment on the proposed rule. A summary of the comments and EPA's response are included in this preamble. The preamble also summarizes a few changes to the rule EPA determined necessary to clarify various provisions. This publication makes the rule final.

The United States Government has a unique legal relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. EPA recognized the uniqueness of Tribal governments by issuing and reaffirming its 1984 policy on the ''Administration of Environmental Programs on Indian Reservations.'' Specifically, EPA recognizes the existence of the trust responsibility in Principle Number 5 of its Indian Policy, which states that the Agency will assure that Tribal concerns and interests will be considered when Agency actions may affect Tribal environments. Additionally, in 1994, the President of the United States issued a presidential memorandum for the heads of Executive Departments and Agencies reaffirming the government-to-government relationships with Native American Tribal Governments. Most recently, on May 14, 1998, the President issued Executive Order 13084, ''Consultation and Coordination With Tribal Governments.'' The Executive Order addresses consultation and collaboration with Indian Tribal governments in developing regulatory policies on federal matters affecting their communities, reducing the imposition of unfunded mandates on Indian Tribal governments, and streamlining the application process and increasing the availability of statutory or regulatory waivers for Indian Tribal governments. Consistent with these principles, this regulation provides an easy-to-use Tribal-specific subpart to optimize the administration of Tribal assistance programs through increased flexibility and to remove procedural impediments to effective environmental programs for Indian Tribes.

In various program specific regulations in this subpart, we have used terms such as ''treatment as a State'' or ''treatment in a manner similar to a State.'' We have used those terms because they are in many of the statutes authorizing grants to Tribes. EPA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of States. EPA believes that Congress did not intend to alter this relationship when it authorized treatment of Tribes ''as States;'' rather, the purpose was to reflect an intent that, insofar as possible, Tribes should assume a role in implementing the environmental statutes in Indian country comparable to the role States play outside of Indian country.

Generally, the administration of financial assistance to Tribes is the same as the administration of financial assistance to States. However, there are provisions in some assistance programs unique to Indian Tribes. For example, Indian Tribes currently compete with each other for limited financial resources in many of the Tribal environmental grant programs listed under § 35.501(a) of the rule. Thus, the stability of annual grant funding for

State, interstate, and local environmental program grants (see 40 CFR part 35, subpart A) is not shared by Tribes. Indian Tribes do not currently receive and cannot rely on continuity of funding from year to year. This uncertainty in financial assistance makes long-term environmental planning difficult. Therefore, the administration of these programs by EPA requires a different approach compared to the approach used when administering an environmental program for State, interstate, or local government agencies.

EPA and many Indian Tribal governments have forged partnerships on a government-to-government basis. An important mechanism to further support these relationships was established when EPA requested and received authorization for a PPG program for Indian Tribes and Intertribal Consortia. (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pub. L. 105–65, 111 Stat. 1344, 1373 (1997)). PPGs allow eligible Tribes and Intertribal Consortia to combine environmental program grants into a single grant in order to improve environmental performance, increase programmatic flexibility, achieve administrative savings, and strengthen the partnerships between Indian Tribes and EPA. Environmental program grants that may be included in PPGs are listed in 40 CFR 35.501(a) and funded under EPA's State and Tribal Assistance Grant (STAG) appropriation account.

This regulation will be codified in 40 CFR part 35, subpart B, as ''Environmental Program Grants for Tribes.'' Subpart B incorporates administrative provisions for grants formerly included in 40 CFR part 35, subparts A and Q. This regulation supplements EPA's regulation, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' contained in 40 CFR part 31, which will apply to grants awarded under this regulation (including grants to Intertribal Consortia as defined in § 35.502, regardless of whether the Consortia are organized as nonprofit corporations under State or Tribal law). We have used the terms ''Tribe'' and ''Intertribal Consortium'' to refer to the entities eligible to receive grants throughout this subpart. Those terms are defined in § 35.502 for environmental programs that do not include their own program-specific definitions. When the definition of either term is different in a specific program provision in §§ 35.540 through 35.718 of the rule, the specific definition will govern.

IV. Requirements for All Environmental Program Grants

Sections 35.500 through 35.518 apply to all environmental program grants covered by 40 CFR part 35, subpart B, including PPGs. This rule contains changes to foster Tribal-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the rule's key features are discussed below.

Tribal-EPA partnerships. To foster joint planning and priority setting, the rule explicitly requires consideration of Tribal priorities along with national and regional guidance in negotiating all grant work plans. All Tribes are provided flexibility through the work plan negotiation process, and, in particular, through their ability to organize work plan components in whatever way fits the Tribe best. However, EPA must be able to link the grant work plans to EPA's Government Performance and Results Act Goal and Objective architecture. Where appropriate, the grant work plan will reflect both EPA and Tribal roles and responsibilities in carrying out work plan commitments and there will be a negotiated process for jointly evaluating performance. Tribes applying for PPGs will have still greater flexibility as described in the PPG discussion below. The EPA Regional Administrator must consult with the National Program Manager before agreeing to a PPG work plan that deviates significantly from national program guidance.

Core performance measures. Core performance measures for Tribal programs are still evolving and may be different from those negotiated by EPA National Program Managers (NPM) with the States. When EPA has negotiated these measures with the Tribes, they will be included in national program guidance and incorporated, as appropriate, into Tribal/EPA Environmental Agreements and grant work plans as the basis for reporting requirements. Until the Tribal core performance measures are further developed, the regions should use significant work plan goals, objectives or commitments for measuring performance, as appropriate.

Accountability. The rule includes results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule are compatible with GPRA and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and Tribal levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. The rule encourages Tribes and Intertribal Consortia to organize their work plans around goals and objectives to reflect the new GPRA requirements.

Administrative changes. Under the rule, Tribes can negotiate funding periods of more than one year with EPA, thereby improving stability in the programs. EPA recommends, however, that funding periods not exceed five years because it is difficult to account for funds and maintain records for longer periods. The funding period of a General Assistance Program (GAP) grant cannot exceed four years. (The term ''funding period'' used in this preamble and 40 CFR 31.23 has the same meaning as the term ''budget period'' on EPA's grant and cooperative agreement and amendment forms.)

The rule streamlines some requirements and eliminates other requirements associated with post-award changes to grant work plan commitments and budgets. It replaces the requirements regarding changes found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a recipient's work plan commitments. Written, but not prior, approval is required for work that will result in a need for increases in grant amounts and extensions of the funding period. However, recipients beginning such work without prior, written approval do so at their own financial risk. EPA approval is no longer required for other changes in the work plan, budget, key persons, or to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

Pre-award costs. Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the funding period, identified in the approved grant application, and would have been allowable if incurred after the award.

Intertribal Consortia. Under this rule, EPA will treat a group of Tribes that applies for a grant (called an Intertribal Consortium in the rule) in the same manner as a single Tribe. Thus, in the absence of clear Congressional intent to the contrary, if a Tribe is eligible for a particular grant, EPA will also treat a group of individually eligible Tribes as

eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested Tribes strengthen environmental protection when limited funding is available to support Tribal environmental programs. Tribes that form Consortia may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each Tribe separately developed and maintained separate environmental programs. Accordingly, Intertribal Consortia as defined in § 35.502, will be eligible to receive grants under the programs listed in § 35.501.

For all grants except GAP grants, all members of an Intertribal Consortium must be eligible to receive the grant and must authorize the Consortium to apply for and receive the grant. This means, for example, that for a Consortium to be eligible for a Clean Water Act section 106 grant, each member of the Consortium must establish that it is a federally recognized Tribe and that it has met the requirement for treatment in a manner similar to a State, because that is required for individual Tribes seeking section 106 grants. If a grant authority does not require Tribes to establish eligibility for treatment in a manner similar to a State to receive a grant, then the authorizing members of a Consortium need not satisfy that prerequisite.

For GAP grants, an Intertribal Consortium will be eligible if (1) a majority of the Consortium's members meet the eligibility requirements for the grant; (2) all members that meet the eligibility requirements authorize the Consortium to apply for and receive the grant; and (3) only the members that meet the eligibility requirements will benefit directly from the grant project and the Consortium agrees to a grant condition to that effect. This means that a Consortium may receive a GAP grant even if the Consortium includes Tribal governments that are not recognized as eligible for the special services provided by the United States to Indians because of their status as Indians so long as the Consortium meets the three requirements specified above. EPA decided to impose somewhat less restrictive requirements on Intertribal Consortia seeking GAP grants because the Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b (IEGAPA), explicitly authorizes GAP grants to an ''Intertribal Consortium,'' which it defines as ''a partnership of two or more Indian Tribal governments authorized by the governing bodies of those Tribes to apply for and receive assistance pursuant to this section.'' This definition may reasonably be interpreted to include a Consortium comprised of a majority of federally recognized Tribes and a few non-recognized Tribal governments. Such a Consortium would be a partnership of federally recognized Tribes, although it would not be a partnership consisting exclusively of federally recognized Tribes. In effect, the recipient of the GAP grant to such an Intertribal Consortium would be a subset of the original Consortium consisting only of those individually eligible Tribes. The Agency is adopting this approach to meet those very rare circumstances where awarding a GAP grant to such a Consortium would be consistent with the intent of the IEGAPA.

EPA believes this approach for making environmental program grants available to Intertribal Consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt ''flexible policy approaches'' and to respect the principle of Indian self-government and sovereignty.

Preferences for Indians, Indian organizations, and Indian-owned economic enterprises. Section 450e(b) of the Indian Education, Assistance, and Self Determination Act, January 4, 1975 (25 U.S.C. 450 *et seq.*), provides:

Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452), or any other Act authorizing federal contracts with or grants to Indian organizations or for the benefit of Indians shall require to the extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

EPA determined that these preference requirements of the Indian Self-Determination Act apply to the award of grants, contracts, subcontracts and subgrants under the grant programs covered by this subpart. In the proposed regulation, EPA asked for comments on implementing this provision, but received none. Since issuing the proposed rule, EPA has determined that the preference requirements of the Indian Self-Determination Act should apply to all grants awarded to Tribes by EPA because they are awarded to Tribes pursuant to statutes authorizing grants to Indian organizations, which includes Tribes and Intertribal Consortia, or for the benefit of Indians. Therefore, the regulations governing the award of all EPA grants to Tribes at 40 CFR part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) are amended in this rule to reflect the preference requirements of the Indian Self-Determination Act and no comparable provision is included in the final rule for 40 CFR part 35, subpart B. EPA is adding to 40 CFR part 31 a new § 31.38 which provides:

Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium that meets the definition and eligibility requirements at 40 CFR part 35, subpart B shall require to the extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians, as defined in the Indian Self-Determination Act (25 U.S.C. § 405b); and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

In addition, the requirements for procurement under grants are amended to include a cross reference to the new preference provision at 40 CFR 31.38. Specifically, 40 CFR 31.36(b)(1) is amended to provide:

Procurement Standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurement actions conform to applicable federal law, the standards identified in this section, and, if applicable, 40 CFR 31.38.

V. Performance Partnership Grants

Sections 35.530 through 35.538 contain the requirements that apply only to PPGs to Tribes or Intertribal Consortia. In a PPG, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Before a Tribe or Intertribal Consortium can include funds from an EPA environmental program in a PPG, it must meet the requirements for that program with a few specified exceptions. For example, if a program

requires treatment in a manner similar to a State, the Tribe or Tribal members of a Consortium must satisfy that requirement in order to include that program's funds in a PPG. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to PPGs because after funds are awarded in a PPG, they may be used for cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. However, the source of the funds is considered by the Regional Administrator in negotiating a work plan with the applicant. See §§ 35.507(a) and 35.535. Key features of the PPG rule are discussed below.

Funds and activities eligible for inclusion in a PPG. Funds for any environmental program grant listed in § 35.501 may be included in a PPG if the funds for that grant were appropriated in the same specific appropriation as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.501.

Unlike the rule governing PPGs to States, § 35.535 of this rule allows Tribes and Intertribal Consortia to use PPG funds for any environmental activity that is eligible under the environmental programs listed in § 35.501 (except EPA delegated, EPA approved, or EPA authorized activities, which still require delegation, approval or authorization), regardless of whether a Tribe applied for or was selected for funding for that particular activity, provided that the Regional Administrator consults with the appropriate NPMs. The NPM may expressly waive or modify the consultation requirement in national program guidance. For example, if EPA found that a Tribe was not eligible for a Clean Air Act section 105 grant, but the Tribe wanted to perform air program monitoring or inspections, the Tribe could pay for those activities with PPG funds, provided that: (1) The Regional Administrator consulted with the appropriate NPMs, including those NPMs for the sources of the PPG funds (unless waived in national program guidance) and (2) the activity was included in the approved PPG work plan. The Tribe would perform these air activities using Tribal authority. To implement an EPA delegated, approved, or authorized program under a PPG, a Tribe would need the delegations, approvals, or authorizations as required under § 35.535(a). Given the wide variety of environmental activities eligible under GAP (see §§ 35.540–35.548), this will allow Tribes, as determined by the Regional Administrator, to use funds from other programs that are put into a PPG for the same wide variety of activities that are eligible for funding under GAP. Furthermore, this will allow Tribes to use GAP funds included in a PPG, to carry out activities that are eligible for funding under any of the other grant programs covered by this subpart as long as the Tribe has any EPA delegation, approval, or authorization required under § 35.535(a).

Within the framework of EPA oversight established by §§ 35.507, 35.514(a), 35.535 and national program guidance, EPA is providing Tribes with flexibility to use PPG funds for a broad variety of activities. EPA believes this approach is appropriate because Tribes need to address a broad range of environmental issues, but do not have the same access to diverse funding sources as States and, generally, Tribes must compete annually for their funds while States do not. EPA believes this approach will help achieve a key purpose of the PPG program: to provide Tribes and Intertribal Consortia with the flexibility to direct resources where they are most needed to address environmental and public health priorities. EPA will retain sufficient programmatic control because § 35.535(b) requires the Regional Administrator to consult with the appropriate NPMs before agreeing to work plans that differ significantly from National Program Guidance. For example, if a Tribe or Intertribal Consortium was selected for funding in a competition based on its proposed work plan for that grant and the Tribe or Consortium proposed a PPG work plan that would significantly modify those proposed work plan activities, then the Regional Administrator would have to consult with the NPM associated with the funding source before approving the work plan (unless waived in national program guidance). Accordingly, the Regional Administrator will be responsible for ensuring that the Tribes and Intertribal Consortia meet the basic requirements of programs which provide funds for the PPG before the Tribes use funds for other important activities.

EPA intends to evaluate the flexibility provided under the rule regarding the activities eligible for funding under a PPG. After the third year of implementing the program, but before the end of the fifth year, the Agency will evaluate the environmental benefits of this flexibility as compared to the costs, which may include reduced accountability for funds and outcomes. Based on that evaluation, the Agency will determine whether to continue to allow Tribes to use PPG funds to perform activities under programs for which they are not eligible to receive a grant. If the Agency determines that a change in the regulation is appropriate, it will revise the regulations appropriately.

Administrative flexibility. A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget. Once funds are awarded in a PPG, the Tribe or Intertribal Consortium can direct the funds as needed to achieve work plan commitments and does not need to account for funds in accordance with their original program sources. However, EPA must be able to link the grant work plans to EPA's GPRA goal and objective architecture. These features also make it possible for Tribes to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

Cost share. The PPG cost share is the sum of the cost shares required for all individual program grants included in the PPG in accordance with 40 CFR 35.536(b) and (c) for each individual program grant included in the PPG. EPA will not require Tribes and Intertribal Consortia to provide a PPG cost share for funds from programs which do not require cost shares, such as GAP. (Cost sharing requirements for individual programs are found under §§ 35.540 through 35.718.) For funds from programs with a cost share requirement of five percent or less under the provisions of §§ 35.540 through 35.718, the PPG cost share will be the same as the cost share for the individual programs, as identified in §§ 35.540 through 35.718. For funds from programs with a required cost share greater than five percent, EPA will require Tribes to provide a cost share of five percent; however, after the first two years, the Regional Administrator will determine through an objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the Regional Administrator determines that the Tribe or members of the Intertribal Consortium meet such indicators, then the Regional Administrator will increase the required cost share up to a maximum of 10 percent. If the Regional Administrator determines that the Tribe or the members of the Intertribal Consortium do not meet such indicators, then the cost share will remain at five percent.

(The required cost share for the Tribal Water Pollution Control Grant Program (Clean Water Act, section 106) is five percent; therefore, it is not one of the grant programs under which the cost share could be raised to 10 percent through the Regional Administrator assessment and determination process.)

Further, the Regional Administrator may waive the required PPG cost share at the request of the Tribe or Intertribal Consortium if the Regional Administrator determines, based on an objective assessment of socio-economic indicators, that fulfilling the cost share requirement would impose undue hardship on the Tribe or members of the Intertribal Consortium. EPA received several comments on the cost sharing provisions of the proposed rule. The comments are discussed in Section VII of this preamble.

In the preamble to the proposed rule, EPA invited suggestions for the socio-economic indicators for approval of the lower cost share and waiver of cost share, as well as suggestions for how the cost share for Intertribal Consortia should be calculated. EPA did not receive any recommendations for the socio-economic indicators.

VI. Indian Environmental General Assistance Program and Performance Partnership Grants

An important and unique environmental program available only to Tribes and Intertribal Consortia is the Indian Environmental General Assistance Program (GAP) (40 CFR 35.540 *et seq.*) This program was created to assist Indian Tribes in developing the capacity to manage their own environmental protection programs. GAP offers the opportunity for Tribes to develop integrated environmental programs, to develop capacity to manage specific programs that can be delegated by EPA, and to plan, develop, and establish a core program for environmental protection. It also provides the opportunity for Tribes to define and develop administrative and legal infrastructures, and to undertake additional activities to plan, develop, and establish environmental programs within a simplified administrative framework.

GAP funds can be used more flexibly than categorical environmental program funds. EPA recognizes the Tribes' need for flexibility in using limited resources available for protecting Tribal environments, but believes that this need for flexibility must be balanced with the Agency's goals of establishing a strong Tribal environmental presence in Indian country and of diversifying financial resources available to Tribes for the administration of comprehensive environmental programs. GAP funds are primarily available for and critical to the development of sustainable, integrated Tribal environmental programs. The long-term goal of developing and maintaining an adequate level of funding for Tribal environmental programs will be best served not by increasing the number of activities that are funded by GAP, but rather by expanding and diversifying the use of various categorical environmental programs funds, in addition to the use of GAP funds.

When Congress authorized the PPG program, it allowed GAP funds to be included in such a grant. However, to balance competing interests in the use of GAP funds, EPA encourages Tribes and Intertribal Consortia to continue to use GAP funds, at least in the first instance, for the development of Tribal capacity to manage environmental programs and not to use these funds for media-specific environmental activities. EPA believes that the overriding value of GAP lies in its ability to assist Tribes in the development of their environmental program capacity. This original and primary purpose of GAP has not been fully realized since some Tribes have not yet developed an environmental program capacity. Including a GAP grant in a PPG should not result in a reduction of EPA media-specific environmental program assistance available to Indian Tribes and Tribal Consortia.

VII. Response to Comments

EPA received 16 letters commenting on the proposed rule. In general, the comments supported the rule as written but suggested several changes. Specifically:

1. Three commenters addressed EPA's intention to include regulations for the Hazardous Waste and Underground Storage Tank programs in the final rule. One commenter asked that the programs be added to the rule immediately while two asked that the provisions for these programs be made available for public comment first.

EPA decided to include the Hazardous Waste and Underground Storage Tank Grant Programs in the final rule to provide Tribes with an expedited opportunity to include funds from these programs in a PPG and to allow Tribes to use PPGs for activities eligible for funding under these grant programs even if they do not include funds from these programs in a PPG (consistent with the limitations at § 35.535). EPA believes that giving Tribes the option, as soon as possible, of including Hazardous Waste and Underground Storage Tanks grants in a PPG provides Tribes with greater flexibility in building a partnership for environmental protection than not including the programs in subpart B at this time. Furthermore, as part of its regulation review process EPA provided copies of the draft final rule to many Tribal representatives including those who serve on the EPA Tribal Operations Committee (TOC), the National Tribal Environmental Council (NTEC) and the Tribal Association of Solid Waste and Emergency Response (TASWER). Finally, as noted above, comments on this rule, although final, may be submitted to the person identified above in the **FOR FURTHER INFORMATION** section above. Although EPA does not anticipate doing so, EPA could amend this rule in response to comments without having to go through a subsequent notice and comment rule making. This is because rules regarding the award and administration of grants are explicitly exempt from the notice and comment requirements of the Administrative Procedure Act APA (5 U.S.C. 553(a)(1)).

2. One commenter noted that Section VII of the Preamble included a reference to ''State'' work plans and it should refer to Tribal work plans.

EPA apologizes for any confusion this mistake may have caused. EPA will substitute the words Tribe, or Tribal for State in this paragraph.

3. Two commenters suggested the term ''Tribal/EPA Environmental Agreement'' (TEA) should not be defined in the rule because TEAs are not intended to bind Tribes to any particular substantive requirements. The commenters stated that the definition would tend to increase rather than streamline requirements.

EPA agrees that the decision whether to negotiate a TEA is discretionary. Nevertheless, EPA believes it is appropriate to include the definition since a TEA may be used as a work plan under § 35.507(c). EPA is today revising the definition of Tribal/EPA Environmental Agreement that was included in the proposed rule to be more consistent with Administrator Browner's 1994 Action Memorandum for the EPA Indian Program and the American Indian Environmental Office's template and guidance on TEAs which views these as dynamic rather than static documents. To the extent a TEA is used as the basis for a PPG work plan, the version used would be binding for the purposes of the agreement. For an explanation of EPA's work with Tribes to develop TEAs, please see Administrator Browner's July 12, 1994, Tribal Operations Action Memorandum

and American Indian Environmental Office Director's July 1995 TEA Template. Both of these documents are available at: *http://www.epa.gov/indian,* or contact Bob Smith at EPA's American Indian Environmental Office at (202) 260–8202.

Including an appropriate definition for a TEA in the regulation does not impose any requirement for a Tribe to have a TEA, or add new requirements for the content of a TEA. Further, there is no requirement that a TEA be developed. The intention of § 35.507(c) is to provide added flexibility for EPA and a Tribe to agree to use a TEA or a portion of the TEA as the work plan or part of the work plan for an environmental program grant: (1) If they choose to do so; and (2) if the portion of the TEA that is to serve as the grant work plan clearly identifies and distinguishes work plan activities from other portions of the TEA and meets the work plan requirements in § 35.507(b). EPA reasoned that, in some cases, the development of a work plan could actually be made easier if parts of it had already been formulated when the Tribe developed its TEA.

4. Three commenters expressed concern about § 35.504 which will allow Intertribal Consortia to receive grants under all of the grant programs covered by this rule. The commenters maintain that EPA should not award grants to Consortia because it might jeopardize the autonomy of Tribes, conflict with an individual Tribe's proposals, or result in the duplication of activities or performance of activities that are not supported by all members of the Intertribal Consortium.

EPA understands these concerns and has modified the final rule to ensure that such consequences do not result from the award of grants to Intertribal Consortia. Section 35.502 defines Intertribal Consortium as ''a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in § 35.501,'' and § 35.504(a) provides that ''an Intertribal Consortium is eligible to receive a grant under the authorities listed in § 35.501 only if the Consortium demonstrates that all members of the Consortium * * * authorize the Consortium to apply for and receive assistance.'' The definition of Intertribal Consortium in the proposed rule also provided that ''[a] Consortium must have adequate documentation of the existence of the partnership and the authorization to apply for and receive assistance.'' Thus, an Intertribal Consortium must be able to provide some documentary proof that a Tribe has authorized it to apply for and receive a specific grant on the Tribe's behalf.

To clarify the eligibility and documentation requirements, EPA made a number of changes in the final rule. First, EPA moved the documentation requirements from the definition of Intertribal Consortium to the section on eligibility requirements. In addition, EPA clarified that the documentation must show that all members of the Consortium (or all eligible members of the Consortium in the case of a GAP grant) authorize the Consortium to apply for and receive the grant for which the Intertribal Consortium has applied. The final rule also makes it clear that Intertribal Consortia must both ''have'' this documentation and submit it to EPA in order to be eligible for a grant award as a Consortium. The documentation of the member Tribes' authorization of the Consortium should specify the period of time for which the authorization is effective without further action by the authorizing Tribe and whether the authorization applies to particular grants or all grants for which the Consortium may apply. Members of a Consortium may impose other requirements on their Consortium to ensure that the Consortium cannot act on their behalf without their authorization. EPA believes that these provisions, as modified in the final rule, will ensure that grants to Consortia do not jeopardize the autonomy of a Tribe, conflict with a Tribe's own proposals, or involve activities not supported by all Tribes that are members of the Consortia. In addition, EPA's review of work plans will further reduce the possibility that Tribes and Intertribal Consortia carry out duplicative activities.

5. Three comments concerned the provisions related to changes in assistance agreements after award. One stated EPA should reduce the number of small changes required, especially in the GAP program with respect to the grant budget.

EPA believes this regulation will eliminate the need for frequent budget revisions for such small changes as unanticipated fluctuations in travel, lodging, or office equipment prices. Those changes will not have to be reported or require prior approval unless the Regional Administrator determines otherwise in specific cases. Section 35.514(c) states that recipients do not need to obtain approval for changes in budgets unless the Regional Administrator determines additional approval requirements should be imposed on a specific recipient for a specified period of time. Amendments to environmental program grant amounts and extensions of the budget period still, however, require approval from the Regional Administrator under § 35.514(b).

Two commenters suggested that EPA define ''significant'' as used in § 35.514(a) and explain the circumstances under which the Regional Administrator might determine that additional approval requirements should be imposed in § 35.514(c).

Section 35.514 requires recipients to obtain the Regional Administrator's prior written approval before making significant changes to the grant work plan or budget after the work plan has been negotiated. Under the Uniform Administrative Regulations for Grant and Cooperative Agreements to State and Local Governments (40 CFR part 31), Tribes and Intertribal Consortia would also be required to get EPA's prior written approval for ''any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval)'' (40 CFR 31.30(d)(1)). EPA believes that for the continuing environmental program grants covered by this rule, prior written approval for changes should be necessary only for significant changes, and that the grantee, with assistance from the EPA project officer, if necessary, is in the best position to distinguish significant from insignificant changes in the context of its particular work plan. Further, defining the term would reduce management discretion and flexibility which we believe are essential to the regulation. Accordingly, EPA has decided not to define ''significant''. If there is any question as to whether a post-award change in the work plan is significant, the grantee is encouraged to consult with the EPA project officer either during work plan negotiations or before making the change.

These commenters also asked EPA to explain the circumstances under which the Regional Administrator might determine that additional approval requirements should be imposed in § 35.514(c).

Section 35.514(c) provides that no approval is required for changes other than those changes described in § 35.514(a) and (b), unless the Regional Administrator determines that approval requirements should be imposed on a specific recipient for a specific period of time. Thus, § 35.514(c) eliminates requirements for that category of changes, but gives the Regional Administrator the authority to impose them on a case-by-case basis. There are a variety of circumstances which could lead EPA to impose such requirements.

For example, the Regional Administrator might determine that additional approval requirements should be imposed when it is determined the additional requirements are necessary to ensure proper management of EPA grants because the recipient has had a history of poor performance and corrective actions directed by audits.

6. Two comments asked that EPA define ''cumulative effectiveness'' and ''sufficient progress'' as used in § 35.515.

Section 35.515 describes the process developed by the Regional Administrator and the Tribe or Intertribal Consortium for jointly evaluating a recipient's performance under the grant in accordance with § 35.515(a). Paragraph (b) of § 35.515 provides, in pertinent part, that ''the evaluation process must provide for * * * a discussion of the cumulative effectiveness of the work performed under all work plan components''. Paragraph (c) states that ''if the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues''. The phrase ''cumulative effectiveness'' in the context of § 35.515(b) refers to how effectively the recipient carried out the work under all of the work plan components, taken together. The phrase ''sufficient progress'' in the context of § 35.515(c) is a jointly agreed upon assessment of accomplishments as measured against the work plan commitments.

EPA believes that a regulatory definition of these terms would significantly restrict the flexibility afforded both Regional Administrators and applicants under § 35.515, particularly since the regulation contemplates a jointly developed process for jointly evaluating and reporting progress and accomplishments under the work plan.

7. Two commenters state the Administrator should not be able to use a guidance document to delete a program from coverage under a PPG.

Section 35.533 provides that the Administrator may in guidance or in regulation describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in PPGs. EPA grant guidance may include rules (as ''rule'' is defined by the Administrative Procedure Act, which explicitly exempts grant related rules from notice and comment rule making requirements). There may be changes in the list of environmental programs eligible for inclusion in a PPG as a result of EPA's annual appropriation act and Tribes will need to know about those changes as soon as possible since they will take effect at the start of the fiscal year. Thus, EPA believes it is important to be able to inform grantees of such changes quickly in a guidance document rather than in a rule. Any changes in the list of environmental programs will be published in the **Federal Register**.

8. One commenter supported the cost sharing requirements included in the proposed regulation while several stated that EPA should reduce the cost share required under PPGs to zero (see § 35.536).

The formula will reduce the cost share from current levels for Tribes that move grants with matches greater than five percent into a PPG. EPA carefully considered the question of further reductions in the cost share for Tribal recipients and concluded that some investment by recipients is generally appropriate to expand the ability of EPA and its partners to protect public health and the environment from pollution. Section 35.536(d) also authorizes the Regional Administrator to waive the cost share requirement at any time upon request by the Tribe or Intertribal Consortium, if the Regional Administrator determines the cost share would impose undue hardship. EPA notes that PPGs and many of the Agency's grant programs allow for recipients to meet the cost share requirements with in-kind services (see 40 CFR 31.24).

9. One commenter expressed concern that PPGs do not work well for Tribes because Tribal grants are not awarded at the same time in a fiscal year, causing the Tribes and EPA to continually update the PPG. The commenter also expressed concern that certain grants are not eligible for the PPG, including solid waste and emergency response grants.

Finally, the commenter stated that: ''It seems as though there is a[n] undercurrent of mistrust by Regional program offices, because of the newness of PPG's to Tribes, that fuels the conception that Tribes are not capable of this type of grant management.'' The commenter expressed concern that EPA is scrutinizing the grants management practices of Tribes more than those of States.

The concern raised by the commenter about the timing of grant awards is valid. EPA hopes that the opportunity to streamline administrative procedures in a PPG will provide an incentive for closer alignment of funding cycles in the Agency's grant programs.

Under the legislation authorizing the PPG program (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pub. L. 105–65, 111 Stat. 1344, 1373 (1997)), EPA has made as many environmental program grants as possible eligible for inclusion in a PPG. With this final rule, funds from all 17 environmental program grants available to Tribes in the Agency's earmark for multi-media or single media pollution prevention, control and abatement and related activities, which are in the ''State and Tribal Assistance Grant'' (STAG) appropriation account, may be included in PPGs. Only funds included in that particular earmark within the STAG account are available for inclusion in PPGs because the statutory authority to award a PPG is limited to those funds. Funds from other EPA appropriations, such as those for Superfund emergency response grants are not included in the earmark. The programs that are funded under this regulation are those listed in § 35.501. EPA does not currently have a grant program for continuing solid waste programs. Under this rule, however, Tribes may use GAP funds to develop and implement solid waste programs (see § 35.545).

EPA has traditionally received funding for its grant programs on a media-specific basis and reported to Congress on program accomplishments similarly. The concerns raised by the commenter regarding ''additional scrutiny'' and ''an undercurrent of mistrust'' may reflect the challenge (and growing pains) associated with adopting a new approach that allows funds appropriated by Congress on a media-specific basis to be merged into a PPG. The fact that, due to funding limitations, many EPA programs award grants to Tribes on a competitive basis, rather than through an allotment process, may compound the difficulty of moving from individual Tribal grants to PPGs.

EPA believes its requirements for State and Tribal grants administration are similar under subparts A and B. However, EPA has recognized that there are unique features to Tribal grant programs which make implementation of a PPG more challenging. For example, in addition to the competition for funds described above, an individual Tribe will generally have access to fewer EPA grants on an annual basis than EPA's State partners. Therefore, EPA has provided the opportunity for more flexibility in the use of Tribal grants

funds. In particular, EPA is allowing Tribes and the Regional Administrator to develop a PPG work plan that may include activities that are eligible for funding under any of the PPG-eligible grant programs (within certain limitations), even if funds from certain grant programs were not included in the PPG. In contrast, EPA is requiring States to receive funding from a grant program in order to use PPG funds for activities under that program.

10. One commenter opposed award of GAP grants to Intertribal Consortia because GAP grants are ''awarded to build capacity to administer environmental programs on Indian lands by providing general assistance to plan, develop and establish the capability to implement environmental programs in Indian Country.'' The commenter stated that such capacity building should be undertaken by individual Tribes, not by Consortia.

EPA disagrees. Because we have defined an Intertribal Consortium as a partnership between two or more Tribes (defined in this rule generally as Indian Tribal governments), GAP grants to Intertribal Consortia will assist those Tribes that are members of the Consortium to build capacity to administer environmental programs. Furthermore, the Indian Environmental General Assistance Program Act (42 U.S.C. 4368b) explicitly authorizes EPA to award grants to Intertribal Consortia. EPA prefers not to restrict the eligible recipients of GAP grants further than the statutory authority for GAP grants. Therefore, EPA has not changed the final rule in response to this comment.

11. Two commenters asked for clarification of what constituted ''otherwise available funds'' which would prevent funding under the Clean Air Act section 105 referenced in § 35.576(d). Section 35.576(d) provides that ''[t]he Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.''

EPA intended § 35.576(d) to refer only to Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) (for Tribes that have not established eligibility for treatment in a manner similar to a State) and it is a corollary to the maintenance of effort requirement applicable to such Tribes. It does not apply to Tribes that are eligible for a section 105 grant under § 35.573(a) (for Tribes that have established treatment as a State). Non-federal funds that would otherwise be available ''for maintaining the section 105 program'' would include Tribal funds in an amount equal to that which the Tribe expended on the Air 105 program in the previous year. To clarify that this section applies only to Tribes that establish eligibility under § 35.573(b), EPA added the phrase ''For Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) of this subpart'' to the beginning of this paragraph. We also changed the numbering of the section as follows: Section 35.576(b) became § 35.576(a)(1); § 35.576(c) became § 35.576(a)(2) and § 35.576(d) became § 35.576(b).

12. Two commenters requested that the limit on administrative costs in the Nonpoint Source Program (§ 35.638(c)) be clarified. They asked, does the 10 percent limit apply to Tribal general administrative costs or to general and administrative costs associated with the program? If the former, they ask that a phrase, ''unless the applicant has an indirect cost rate agreement,'' be added at the end of the sentence containing the limitation. If the latter, they express concern that this limitation is so severe as to result in an inability of the Tribes to administer the program at all.

EPA does not have the discretion to remove the limitation at § 35.638(c) from the award of grants under section 319 of the Clean Water Act because it is required by law. This limitation is a restatement of the statutory limitation established by section 319(h)(12) which provides that ''administrative costs * * * charged against activities and programs carried out with a grant under this subsection shall not exceed 10 percent of the amount of the grant in such year, except that the costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.'' It applies to grants awarded under section 319 to both States and Tribes. The limitation does not apply to Tribal general administrative costs because general administrative costs that are not associated with a grant program cannot be charged to a grant. Only administrative costs, including allowable indirect costs, that are reasonable and necessary to carry out a grant program or project can be charged to that particular grant. However, it should be noted that section 319(h)(12) specifically exempts the costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs. The experience of States, Territories, and Tribes that have received section 319 grants is that this limitation, defined as it is in the statute, has not posed any significant obstacle to the use of section 319 funds.

13. Two comments strongly supported the increase in funding to be available to Tribes and Intertribal Consortia for drinking water programs (§ 35.673). The commenters agreed with the recent focus on achieving safe and clean drinking water throughout Indian Country and appreciate the recognition of capacity-building needs in respect to Tribal water systems. One commenter asked that the increase of up to seven percent in the Public Water System Supervision (PWSS) program Tribal reserve under § 35.673 be restated to provide for a fixed amount of seven percent. Two other comments strongly opposed the increase. They fear that increasing the Tribal reserve will cause a decrease in PWSS grants available to primacy States. In addition, they argue there should not be an increase in the Tribal reserve since State programs are currently underfunded.

EPA understands the concerns about the increase in the PWSS Tribal Reserve. However, we specifically asked Congress for additional PWSS funds to help Tribes build their capabilities in the PWSS program and to help Tribes meet new requirements that are needed to obtain Drinking Water Infrastructure Tribal Set-Aside grants. These new requirements, such as operator certification and capacity development, are necessary to successfully run a PWSS program as well as to obtain grants. Since Fiscal Year 1998 EPA has received an additional $3,780,500 in the PWSS Program for these purposes. For the past two years, EPA has deviated from the three percent regulatory limit on the amount of PWSS funds reserved for Tribes. We are increasing the regulatory limit on PWSS funds reserved for Tribes because Tribes need these funds to comply with new requirements imposed by the Safe Drinking Water Act Amendments of 1996.

Tribes do not have the same opportunity as States have to use a portion of their infrastructure funding to meet these new requirements. Thus far, States have set-aside more than $91 million from their Drinking Water State Revolving Fund capitalization grants for activities supporting drinking water programs (including PWSS, capacity development and operator certification programs) and are expected to set-aside more funds for these purposes in the future. The only additional funds that have been made available for Tribes is the $3,780,500 million that has been added to the PWSS grants.

The increase in the funds reserved for Tribes is not intended to take funds away from States, but rather to continue to fund the Indian programs at the current level without the need to deviate from the regulations. EPA may not necessarily reserve seven percent of the annual appropriation for PWSS grants; the regulation only provides that ''up to'' seven percent of the PWSS funds shall be reserved for Tribes. This provides EPA flexibility to adjust the amount of the Tribal reserve upward or downward. Thus, for example, if Congress reduces the appropriation for PWSS grants in the future, then EPA may decide to reduce the Tribal reserve to balance it with the need for funding for the States. EPA will work with stakeholders, including States and Tribes, in establishing an equitable allocation.

14. Two commenters asked that the Agency make the regulation effective for Fiscal Years 2000 and 2001 and not retroactively.

EPA agrees. The regulation will apply to new grants awarded 30 days after the regulation is published. EPA will not apply this rule to grants that have already been awarded. A Tribe may, however, close out an existing grant and carry over funding to a new grant awarded under this subpart after the regulation is published.

15. One commenter expressed concern that the definition of ''Indian country'' in subpart B may limit the use of certain grant funds that could otherwise be available to address pollution threats to Usual and Accustomed Areas (areas where certain treaty-reserved fishing rights are exercised) and in ceded lands.

To avoid the appearance of unnecessarily limiting its grant authorities, EPA has reviewed the regulations and removed use of the term ''Indian country'' in four provisions: § 35.516 (Direct Implementation); § 35.540 (Purpose of the Indian Environmental General Assistance Program); § 35.545(b) (Eligible Activities); and § 35.570 (Air Pollution Control Grants). The change to § 35.516 makes this provision consistent with parallel language in the State rule. The changes to §§ 35.540 and 35.545(b) are consistent with the Indian Environmental General Assistance Program Act 42 U.S.C. 4368b. The change to § 35.570 is consistent with Clean Air Act provisions governing use of these grant funds.

16. One commenter stated that the boundaries of many Tribes are constantly being defined and redefined, and wanted to know whether the PPG is sufficiently flexible to accommodate these changes.

To the extent a Tribe or Intertribal Consortium must identify particular land areas in order to be eligible for a grant (either a single media grant or a PPG), and it wants to perform work in an area not identified in the original application, the Tribe or Intertribal Consortium will need to demonstrate that it continues to meet the requirements for receiving grant.

VIII. Other Changes in the Proposed Rule

EPA made a several changes to the proposed rule to clarify certain provisions even though the provisions were not the subject of comments.

1. There is no substantive difference between the definition of Tribe in the GAP provisions of the proposed rule (§ 35.542) and the definition of Tribe at 35.502 which applies to subpart B generally (''Definition of terms''). Section 35.542 of the proposed rule defined ''Tribe'' as ''[a]ny Indian Tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.'' 64 FR 40084, 40097 (1999). This definition was in turn based on the definition of ''Indian Tribal government'' in the Indian Environmental General Assistance Program Act (IEGAPA), which authorizes GAP grants. 42 U.S.C. § 4368b(c)(1).

The definition of Tribe in § 35.502 of the proposed and final rules provided that ''Except as otherwise defined in statute or this subpart, Indian Tribal Government (Tribe) means: any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the United States Department of the Interior for the special services provided by the United States to Indians because of their status as Indians.''

The inclusion of Alaska Native regional or village corporations in the definition of Indian Tribal government in IEGAPA and the proposed rule has created some confusion because regional and village corporations are not governments, and they are not recognized as eligible for the special services provided by the United States to Indians because of their status as Indians. Since Alaska Native regional and village corporations are not federally recognized governments, they are not eligible for GAP grants.

In the proposed rule, the only difference between the definitions of Tribe in §§ 35.542 and 35.502 was the inclusion of Alaska native regional and village corporations in § 35.542. However, as discussed above, there is no substantive difference between the definitions because no Alaska native regional and village corporation is in fact eligible for a GAP grant as a ''Tribe''. As there is no need for a GAP-specific definition of Tribe, we have omitted the definition of Tribe for GAP grants at § 35.542, and the general definition at § 35.502 will apply instead.

Although Alaska Native regional and village corporations are not eligible for GAP grants, an Alaska Tribe receiving a GAP grant may award a subcontract or subgrant to a village or regional corporation (just as they could to any other organization), in accordance with EPA's regulations governing subcontracts and subgrants.

2. The regulation uses the term ''Regional Administrator'' throughout. However, grants subject to these provisions may also be approved and awarded by officials in EPA Heaquarters from time to time. Accordingly, the final rule has been modified by adding § 35.501(c) to clarify that this subpart applies and the phrase ''Regional Administrator'' means ''Assistant Administrator in the case of grants awarded from EPA headquarters.

3. We revised § 35.576 to make it clear that while applications for Section 105 Air Pollution Grants must indicate recipients will meet the Maintenance of Effort (MOE) provision of the program (§§ 35.576(a)), recipients' actual expenditures must actually meet the MOE level. We have added section § 35.576(a)(2) to make clear the Regional Administrator must take action to recover the grant funds, if expenditures do not meet the required level.

4. We revised § 35.708(h) to make clear that Indoor Radon program grant funds under section 306 of TSCA may be used to cover the costs of Tribal and Intertribal Consortium proficiency rating programs, but not a federal one.

5. After publishing the proposed rule, EPA reevaluated the eligibility requirements for Intertribal Consortia seeking GAP grants (section 35.504). That provision is intended to allow a GAP grant to a Consortium that includes a majority of recognized and a minority of non-recognized Tribes (it was not intended to allow a GAP grant to a Consortium that includes non-Tribal organizations and businesses). While EPA reaffirms its determination to award GAP grants to Intertribal

Consortia made up of a majority of federally recognized Tribes and a minority of non-federally recognized Tribes, EPA has modified the eligibility requirements for Intertribal Consortia seeking GAP grants in order to further ensure that only those members of an Intertribal Consortium that are federally recognized Tribes directly benefit from the grant.

6. The Clean Air Act prohibits the use of revenue collected under a Title V operating permit program to meet the cost share requirements of an air pollution program under section 105 of the Clean Air Act. We added a new paragraph (c) to § 35.575 to make this clear.

IX. Implementing GPRA

EPA has developed an integrated approach to implement GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program accomplishments or outcomes. Tribes and Intertribal Consortia, by virtue of authorized or delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with results-based outcomes will incorporate—at the GPRA goal, objective, and subobjective level—expenditures incurred in the form of payments to the Tribes under grants and cooperative agreements. In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the Tribes. In addition, under current regulations EPA generally may not impose accounting requirements on Tribes beyond those currently required by 40 CFR part 31.

EPA, therefore, will use the budget information that Tribes and Intertribal Consortia provide in grant applications as a basis for linking the Agency's actual expenditures with EPA's results-based accomplishments or outcomes. EPA will be able to rely on Tribal budget information sufficiently to determine the costs of EPA's results-based outcomes according to the requirements of this rule:

(1) Tribes and Intertribal Consortia provide the program budget information required as part of the application (see § 35.507(b)(2)(ii));

(2) EPA and the recipients explicitly define work plan goals, objectives, outcomes, and outputs, as well as the program flexibility contained in the work plan (see § 35.507(b)(2)(i)); and

(3) Recipients report back on work plan accomplishments (see § 35.515).

The rule will ensure these three requirements are met. Additionally, in accordance with § 35.514(a), recipients may make significant changes to the work plan commitments only after obtaining the Regional Administrator's prior written approval. The regional office, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions. If necessary, the EPA funding office will make adjustments to original budget linking work plan components to EPA's goal and objective architecture. Once these requirements are met, they provide a reasonable basis for associating the costs of its grants with the Agency's results-based outcomes.

EPA in consultation with recipients, is responsible for cross-walking the Tribal budget information (grant application and work plan data) into the GPRA goal, objective, and subobjective architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the Tribal government to develop an estimate of the budget associated with the revision so that it can be reflected in regional office GPRA reporting. Cross-walk information is developed by EPA during the work plan/PPA negotiations process with the Tribe or Intertribal Consotium.

X. Program Specific Provisions

Requirements applicable to each environmental grant program, such as the requirements regarding eligibility and cost share, are located in 40 CFR 35.540 through 35.718.

Programs not specifically available to Tribes. Sections 28 and 306 of the Toxic Substances Control Act (TSCA) and section 6605 of the Pollution Prevention Act (PPA) provide explicit authority for grants to States, but are silent regarding grants to Tribes. This rule reflects EPA's determination that those statutes may be interpreted to also authorize grants to Tribes for radon abatement (TSCA section 306) and toxic substances compliance monitoring programs (TSCA sections 28), and reaffirms EPA's determination that Tribes are eligible for Pollution Prevention Grants under section 6605 of the PPA (*see, e.g.,* 56 FR 11553 (1991)).

Previously, EPA determined that it has the authority to approve Tribal lead-based paint abatement certification and training programs and make grants to Tribes under section 404(g) of TSCA for the development and implementation of such programs even though TSCA makes no mention of Tribes. 61 FR 45778, 45805–808 (1996). The Agency reasoned that its interpretation of TSCA is governed by the principles of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984) and that because Congress has not explicitly stated its intent in adopting the statutory provision, the Agency could adopt an interpretation which in its expert judgment is reasonable in light of the goals and purposes of the statute. EPA opined further that since TSCA did not define a role for Tribes, there was an ambiguity in Congressional intent and therefore, the Agency's interpretation of TSCA to allow Tribes to apply for program authorization was permissible under *Chevron.* EPA reasoned further that this interpretation is consistent with Supreme Court precedent holding that limitations on Tribal sovereignty must be ''unmistakably clear,'' *Montana* v. *Blackfeet Indian Tribe,* 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation,* 502 U.S. 251, 268 (1992). Finally, EPA noted that allowing Tribes to apply for program authorization is consistent with the general principles of federal Indian law ''encouraging Tribal independence,'' *Ramah Navaho Sch. Bd.* v. *Bureau of Revenue,* 458 U.S. 832, 846 (1985), and the Agency's Indian policy which states that environmental programs in Indian country will be implemented to the maximum extent possible by Tribal governments. In light of these principles, EPA reasoned that Tribes are also eligible for grants to develop and implement lead-based paint certification and training programs under section 404(g) of TSCA.

Consistent with the reasoning that warranted EPA's determination with respect to Tribal lead program approval and grant authority, EPA interprets sections 28 and 306 of TSCA and section 6605 of PPA to authorize grants to Tribes as well as States, even though there is no program approval or authorization associated with the grant programs for radon abatement, toxics substance compliance monitoring, or pollution prevention incentives. While Congress did not expressly provide a role for Tribes in either TSCA or PPA, both statutes were clearly intended to have comprehensive, nationwide coverage—including the provisions regarding financial assistance for these programs. EPA does not believe that

Congress intended the Agency to provide grants exclusively to States and thereby leave Tribal lands without the benefit of grant assistance for these programs, since the problems and goals they address—toxic substances, radon abatement and pollution prevention—are relevant throughout the nation in both State and Tribal areas. Therefore, EPA has determined that it is appropriate to provide grants to Tribes for Radon Abatement programs under section 306 of TSCA, Toxics Substances Compliance Monitoring programs under section 28 of TSCA, and Pollution Prevention Grant programs under section 6605 of PPA.

In order to be eligible for a grant under TSCA section 28, TSCA section 306, or PPA section 6605, a Tribe or each member of an Intertribal Consortium must establish eligibility for treatment in a manner similar to a State by demonstrating that it:

(1) Is recognized by the Secretary of the Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

If the Administrator has previously determined that a Tribe has met the prerequisites in paragraphs (1) and (2) for another EPA program, the Tribe need provide only that information unique to the particular program required by paragraphs (3) and (4).

Public water system supervision Tribal reserve. Until now, EPA's regulation (40 CFR 35.115(g)) has provided that EPA annually reserve up to three percent of each year's Public Water System Supervision (PWSS) funds for use on Indian lands. The Agency is increasing the limit to allow a reserve of up to seven percent. This increase will provide needed funds for the Tribal PWSS program without affecting States' current funding. (See also the response to comments on this issue.)

The Tribal reserve is used for two purposes: to allow EPA to directly implement the PWSS program on Tribal lands; and to assist Tribes with developing PWSS primacy programs. The three percent ceiling, established in 1988, was EPA's estimate of the amount that would be needed to achieve both of these purposes. Over the past 10 years, we have realized that three percent is not adequate to achieve both purposes. To date, only a small number of Tribes have taken steps toward PWSS primacy. We believe that there are more Tribes which may be interested in the program but have not yet voiced that interest because they do not have the capacity to develop an adequate program. We also believe more Tribes would take interest in the program if sufficient funds were available.

In addition, the current Tribal reserve is insufficient to cover basic direct implementation needs. Tribal systems have a high number of monitoring/reporting and maximum contaminant level violations. These same systems will need to abide by upcoming drinking water regulations and will be asked to partake in several new initiatives outlined in the revised SDWA, including source water protection, capacity development, and operator certification. Although Tribes are not required to apply for PWSS primacy, we believe that EPA, as the primary enforcement authority of non-primacy Tribal systems, should address these initiatives on Tribal lands. Additional Tribal funding can help EPA and Tribes respond to Tribal safe drinking water needs.

EPA requested Congress to provide for funding in excess of the amount necessary for the traditional three percent reserve in Fiscal Year 1998 and succeeding years to assist Tribes in developing capacity and maintaining their own PWSS programs, and to provide additional support to the Tribal PWSS Direct Implementation program. In Fiscal Years 1998, 1999, and 2000, EPA received an additional $3,780,500 for these purposes. In order to use those funds for Tribes, EPA needed to deviate from the regulation at 40 CFR 35.115(g), which limits EPA's Tribal PWSS reserve to three percent. Instead of continuing to deviate from the regulations, EPA is raising the ceiling of the annual Tribal reserve to up to seven percent. With the additional $3.78 million PWSS program appropriation, EPA was able to raise the funding ceiling for Tribes to 6.91 percent, the amount available to Tribes in Fiscal Year 2000, without reducing current State funding levels.

Safe Drinking Water Act and Alaska Native Villages. EPA is including a new interpretation of the definition of ''Indian Tribe'' in 42 U.S.C. 300f(14) that would include eligible Alaska Native Villages (ANVs) for purposes of PWSS and Underground Water Source Protection (also known as underground injection control (UIC)) grants under 42 U.S.C. 300j–2(a) and (b). It will also allow ANVs to be considered for primacy for the PWSS and UIC programs under 42 U.S.C. 300g–2, 300h–1 and 300h–4. Under this approach, a federally recognized Tribe in Alaska could seek to demonstrate that it is eligible for treatment in the same manner as a State according to the criteria established by Congress in 42 U.S.C. 300j–11 and in EPA's regulations at 40 CFR 142.72 and 145.52.

In 1988, EPA announced its interpretation that the term ''Indian Tribe'' in 42 U.S.C. 300(f)(14) does not include ANVs. 53 FR 37396, 37407. This interpretation was based on the Agency's interpretation of the legislative history of the Act. At the time, EPA reasoned that Congress would have explicitly mentioned ANVs if it intended to include ANVs in the definition of Indian Tribes. Since then, EPA has reconsidered that interpretation and now believes it is more consistent with Congressional intent and federal Indian law and policy to interpret the term ''Indian Tribe'' in 42 U.S.C. 300f(14) to include Indian Tribes located in Alaska (*i.e.,* ANVs) that otherwise meet the SDWA's definition of Indian Tribe.

Under the SDWA, the term ''Indian Tribe'' means ''any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.'' 42 U.S.C. 300(f)(14). In 1993, the Department of the Interior (DOI) clarified that the Alaska Native entities listed on DOI's list of federally recognized Tribes have the same governmental status as other federally acknowledged Indian Tribes by virtue of their status as Indian Tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged Tribes; have the right, subject to general principles of federal Indian law, to exercise the same inherent and delegated authorities available to other Tribes; and are subject to the same limitations imposed by law on other Tribes. 58 FR 54364, 54366 (1993).

Thus, because DOI has clarified that federally-recognized Tribes in Alaska have the same status as other federally-recognized Tribes, EPA believes that ANVs that otherwise meet the SDWA's definition of Indian Tribe should not be excluded from seeking PWSS and UIC program primacy or related program grants. This interpretation is consistent with the plain language of the SDWA's definition of ''Indian Tribe'' and EPA's policy that Indian Tribes are the appropriate entities to set environmental standards and manage their environments where they have the authority and capability to do so. *See* EPA's 1984 Indian Policy. It is also consistent with Supreme Court precedent holding that any statutory

limitations on Tribal sovereignty must be stated explicitly, *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978); *Montana* v. *Blackfeet Indian Tribe,* 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation,* 502 U.S. 251, 268 (1992).

While this change in interpretation would include ANVs that otherwise meet the SDWA's definition of Indian Tribe within the context of the PWSS and UIC programs, any ANV wishing to seek primacy, or a primacy development grant, for either the PWSS or UIC programs would still need to demonstrate that it meets the relevant statutory and regulatory eligibility criteria, including the jurisdictional requirements contained in 42 U.S.C. 300j–11, 40 CFR 142.72 and 145.52, 40 CFR 35.676 and 35.686 of this subpart. Furthermore, upon the request of an Alaska Tribe in an application for grant or primacy eligibility, EPA will evaluate whether the Alaska Tribe meets the criteria for program primacy or a related program grant. The State of Alaska currently has primacy for PWSS and UIC (Class II wells) for all areas in Alaska except Indian country. EPA is not amending the extent of the State's primacy through this notice.

In the 1996 amendments to the Safe Drinking Water Act, Congress added a sentence to the definition of Indian Tribe explicitly noting that the term ''Indian Tribe'' for purposes of the State Revolving Fund (SRF) program includes ''any Native village.'' 42 U.S.C. 300f(14). EPA believes that, through this change, Congress only intended to ensure that all Native villages may receive SRF grants. EPA believes that this provision was not intended to mean that federally-recognized Tribes carrying out substantial governmental duties and powers in Alaska are excluded from the definition of Indian Tribe for purposes other than SRF.

Regulations for programs to manage hazardous waste and underground storage tanks. After the EPA workgroup reached closure on the proposed rule, Congress authorized the Agency to award grants to Tribes ''for the development and implementation of programs to manage hazardous waste, and underground storage tanks.'' Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2499 (1998). EPA has included regulations for these programs in the final rule.

XI. Conclusion

This Tribal-specific subpart reflects EPA's regulatory and budgetary efforts to improve the continuity and stability of financial assistance for Tribal environmental programs. Recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide Tribes and Intertribal Consortia choosing to participate in the PPG program with the flexibility to better use funds to address their environmental priorities.

Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which notice and comment rule making is required under the Administrative Procedure Act (APA) or any another statute. Grant award and administration matters, such as this rule, are explicitly exempt from the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)) and are not required to undergo notice and comment rule making under any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of ''federal intergovernmental mandate'' and ''federal private sector mandates'' duties that arise from conditions of federal assistance.

National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), requires EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) ''Economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request has been or will be submitted to the Office of Management and Budget for review.

Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not apply to States or local governments; it applies only to Tribes and Intertribal Consortia. Executive Order 13132 does not apply to Tribes and Intertribal Consortia. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule may significantly or uniquely affect the communities of Indian Tribal governments, but it will not impose substantial direct compliance costs on such communities. This rule governs financial assistance to Tribes. Any costs associated with this regulation will be incurred by a Tribe as a result of its discretionary decision to seek financial assistance. Accordingly, the requirements of Executive order 13084 do not apply.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective thirty days after publication in the **Federal Register**.

List of Subjects

40 CFR Part 31

Environmental protection. Administrative practice and procedure, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs-environmental protection, Grant programs-Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: December 28, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 31—[AMENDED]

1. EPA is amending 40 CFR part 31 by revising 40 CFR 31.36(b)(1) and adding a new 40 CFR 31.38 to read as follows:

§ 31.36 Procurement.

* * * * *

(b) *Procurement Standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, § 31.38.

* * * * *

§ 31.38 Indian Self Determination Act.

Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium shall require to the extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians as defined in the Indian Self Determination Act (25 U.S.C. 450b); and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. 1452].

PART 35—[AMENDED]

2. EPA is removing 40 CFR part 35, subpart Q.

3. EPA is adding a new 40 CFR part 35, subpart B to read as follows.

Subpart B—Environmental Program Grants for Tribes

General—All Grants

Sec.

Subpart B—Environmental Program Grants for Tribes

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997); Pub. L. 105–276, 112 Stat. 2461, 2499 (1988).

General—All Grants

§ 35.500 Purpose of the subpart.

This subpart establishes administrative requirements for all grants awarded to Indian Tribes and Intertribal Consortia for the environmental programs listed in § 35.501. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.500–518 contain administrative requirements that apply

to all environmental program grants included in this subpart. Sections 35.530 through 35.718 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

§ 35.501 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to all grants awarded for the following programs:

(1) Performance Partnership Grants (1996 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134; 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1998, Pub. L. 105–65; 111 Stat. 1344, 1373 (1997)).

(2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b.

(3) Clean Air Act. Air pollution control (section 105).

(4) Clean Water Act.

(i) Water pollution control (section 106 and 518).

(ii) Water quality cooperative agreements (section 104(b)(3)).

(iii) Wetlands development grant program (section 104(b)(3)).

(iv) Nonpoint source management (section 319(h)).

(5) Federal Insecticide, Fungicide, and Rodenticide Act.

(i) Pesticide cooperative enforcement (section 23(a)(1)).

(ii) Pesticide applicator certification and training (section 23(a)(2)).

(iii) Pesticide program implementation (section 23(a)(1)).

(6) Pollution Prevention Act of 1990. Pollution prevention grants for Tribes (section 6605).

(7) Safe Drinking Water Act.

(i) Public water system supervision (section 1443(a)).

(ii) Underground water source protection (section 1443(b)).

(8) Toxic Substances Control Act.

(i) Lead-based paint program (section 404(g)).

(ii) Indoor radon grants (section 306).

(iii) Toxic substances compliance monitoring (section 28).

(9) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(i) Hazardous Waste Management Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(ii) Underground Storage Tanks Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.500 through § 35.518 of this subpart also apply to grants to Indian Tribes and Intertribal Consortia under environmental programs established after this subpart becomes effective, if specified in Agency guidance for such programs.

(c) In the event a grant is awarded from EPA headquarters for one of the programs listed in paragraph (a) of this section, this subpart shall apply and the term ''Regional Administrator'' shall mean ''Assistant Administrator'.

§ 35.502 Definitions of terms.

Terms are defined as follows when they are used in this regulation:

Consolidated grant. A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

Environmental program. A program for which EPA awards grants under the authorities listed in § 35.501. The grants are subject to the requirements of this subpart.

Federal Indian reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

Funding period. The period of time specified in the grant agreement during which the recipient may expend or obligate funds for the purposes set forth in the agreement.

Intertribal Consortium or Consortia. A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in § 35.501.

National program guidance. Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, core performance measures, criteria for evaluating programs, and other elements of program implementation.

Outcome. The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant funding period. See ''output.''

Output. An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant funding period. See ''outcome.''

Performance Partnership Grant. A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.530). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Planning target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Regional supplemental guidance. Guidance to environmental program grant applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

Tribal Environmental Agreement (TEA). A dynamic, strategic planning document negotiated by the Regional Administrator and an appropriate Tribal official. A Tribal Environmental Agreement may include: Long-term and short-term environmental goals, objectives, and desired outcomes based on Tribal priorities and available funding. A Tribal Environmental Agreement can be a very general or specific document that contains budgets, performance measures, outputs and outcomes that could be used as part or all of a Performance Partnership Grant work plan, if it meets the requirements of section 35.507(b).

Tribe. Except as otherwise defined in statute or this subpart, Indian Tribal Government (Tribe) means: Any Indian Tribe, band, nation, or other organized group or community, including any

Alaska Native village, which is recognized as eligible by the United States Department of the Interior for the special services provided by the United States to Indians because of their status as Indians.

Work plan. The document which identifies how and when the applicant will use funds from environmental program grants and is the basis for management and evaluation of performance under the grant agreement to produce specific outputs and outcomes (see 35.507). The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations.

Work plan commitments. The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

§ 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 40 CFR 31.6.

§ 35.504 Eligibility of an Intertribal Consortium.

(a) An Intertribal Consortium is eligible to receive grants under the authorities listed in § 35.501 only if the Consortium demonstrates that all members of the Consortium meet the eligibility requirements for the grant and authorize the Consortium to apply for and receive assistance in accordance with paragraph (c) of this section, except as provided in paragraph (b) of this section.

(b) An Intertribal Consortium is eligible to receive a grant under the Indian Environmental General Assistance Program Act, in accordance with § 35.540, if the Consortium demonstrates that:

(1) A majority of its members meets the eligibility requirements for the grant;

(2) All members that meet the eligibility requirements authorize the Consortium to apply for and receive assistance; and

(3) It has adequate accounting controls to ensure that only members that meet the eligibility requirements will benefit directly from the grant project and will receive and manage grant funds, and the Consortium agrees to a grant condition to that effect.

(c) An Intertribal Consortium must submit to EPA adequate documentation of:

(1) The existence of the partnership between Indian Tribal governments, and

(2) Authorization of the Consortium by all its members (or in the case of the General Assistance Program, all members that meet the eligibility requirements for a General Assistance Program grant) to apply for and receive the grant(s) for which the Consortium has applied.

Preparing an Application

§ 35.505 Components of a complete application.

A complete application for an environmental program grant must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.507 of this subpart); and

(c) Specify the environmental program and the amount of funds requested.

§ 35.506 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed funding period.

§ 35.507 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.* (1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and estimated funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component, and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and delegations, approvals, or authorizations.

(c) *Tribal Environmental Agreement as work plan.* An applicant may use a Tribal Environmental Agreement or a portion of the Tribal Environmental Agreement as the work plan or part of the work plan for an environmental program grant if the portion of the Tribal Environmental Agreement that is to serve as the grant work plan:

(1) Is clearly identified as the grant work plan and distinguished from other portions of the Tribal Environmental Agreement; and

(2) Meets the requirements in § 35.507(b).

§ 35.508 Funding period.

The Regional Administrator and applicant may negotiate the length of the funding period for environmental program grants, subject to limitations in appropriations and authorizing statutes.

§ 35.509 Consolidated grants.

Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

EPA Action on Application

§ 35.510 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve,

or disapprove it within 60 days of receipt. The Regional Administrator will award grants for approved or conditionally approved applications if funds are available.

§ 35.511 Criteria for approving an application.

(a) After evaluating other applications as appropriate, the Regional Administrator may approve an application upon determining that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations;

(3) The proposed work plan complies with the requirements of § 35.507 of this subpart; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

§ 35.512 Factors considered in determining award amount.

(a) After approving an application under § 35.511, the Regional Administrator will consider such factors as the amount of funds available for award to Indian Tribes and Intertribal Consortia, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds that the requested level of funding is not justified, the Regional Administrator will attempt to negotiate a resolution of the issues with the applicant before determining the award amount.

§ 35.513 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 40 CFR 31.23(a) (Period of availability of funds), and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award. Such costs must be specifically identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant application.

Post-Award Requirements

§ 35.514 Amendments and other changes.

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* The recipient needs the Regional Administrator's prior written approval to make significant post-award changes to work plan commitments. EPA, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the funding period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *Office of Management and Budget (OMB) cost principles.* The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

§ 35.515 Evaluation of performance.

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan (see section 35.507(b)(2)(iv)). A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

§ 35.516 Direct implementation.

If funds for an environmental program remain after Tribal and Intertribal Consortia environmental program grants for that program have been awarded or because no grants were awarded, the Regional Administrator may, subject to any limitations contained in

appropriation acts, use all or part of the funds to support a federal program required by law in the absence of an acceptable Tribal program.

§ 35.517 Unused funds.

If funds for an environmental program remain after Tribal and Intertribal Consortia grants for that program have been awarded or because no grants were awarded, and the Regional Administrator does not use the funds under § 35.516 of this subpart, the Regional Administrator may award the funds to any eligible Indian Tribe or Intertribal Consortium in the region (including a Tribe or Intertribal Consortium that has already received funds) for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

§ 35.518 Unexpended balances.

Subject to any relevant provisions of law, if a recipient's final Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, either to the same recipient or other Tribes or Intertribal Consortia in the region, for environmental program grants.

Performance Partnership Grants

§ 35.530 Purpose of Performance Partnership Grants.

(a) *Purpose of section.* Sections 35.530 through 35.538 govern Performance Partnership Grants to Tribes and Intertribal Consortia authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134; 110 Stat. 1321, 1321–299 (1996)) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65; 111 Stat. 1344, 1373 (1997)).

(b) *Purpose of program.* Performance Partnership Grants enable Tribes and Intertribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. Subject to the requirements of this subpart, the Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and Tribes and Intertribal Consortia through joint planning and priority setting and better deployment of resources;

(2) Provide Tribes and Intertribal Consortia with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches, such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

§ 35.532 Requirements summary.

(a) Applicants and recipients of Performance Partnership Grants must meet:

(1) The requirements in §§ 35.500 to 35.518 of this subpart which apply to all environmental program grants, including Performance Partnership Grants; and

(2) The requirements in §§ 35.530 to 35.538 of this subpart which apply only to Performance Partnership Grants.

(b) In order to include funds from an environmental program grant listed in § 35.501(a) of this subpart in a Performance Partnership Grant, applicants must meet the requirements for award of each environmental program from which funds are included in the Performance Partnership Grant, except the requirements at §§ 35.548(c), 35.638(b) and (c), 35.691, and 35.708 (c), (d), (e), and (g). These requirements can be found in this regulation beginning at § 35.540. If the applicant is an Intertribal Consortium, each Tribe that is a member of the Consortium must meet the requirements.

(3) Apply for the environmental program grant.

(4) Obtain the Regional Administrator's approval of the application for that grant.

(c) If funds from an environmental program are not included in a Performance Partnership Grant, an applicant is not required to meet the eligibility requirements for that environmental program grant in order to carry out activities eligible under that program as provided in § 35.535.

§ 35.533 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental program grants eligible for inclusion in a Performance Partnership Grant are listed in § 35.501(a)(2) through (9) of this subpart.

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

§ 35.534 Eligible recipients.

(a) A Tribe or Intertribal Consortium is eligible for a Performance Partnership Grant if the Tribe or each member of the Intertribal Consortium is eligible for, and the Tribe or Intertribal Consortium receives funding from, more than one of the environmental program grants listed in § 35.501(a) in accordance with the requirements for those environmental programs.

(b) For grants to Tribes, a Tribal agency must be designated by a Tribal government or other authorized Tribal process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant.

§ 35.535 Activities eligible for funding.

(a) *Delegated, approved, or authorized activities.* A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated, EPA-approved, or EPA-authorized activities, such as permitting and primary enforcement responsibility only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations, approvals, or authorizations to conduct such activities.

(b) *Other program activities.* Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers also may define in national program guidance ''significant'' differences from a work plan submitted with a Tribe's or a Consortium's application for funds.

§ 35.536 Cost share requirements.

(a) The Performance Partnership Grant cost share shall be the sum of the amounts required for each environmental program grant included in the Performance Partnership Grant, as determined in accordance with paragraphs (b) and (c) of this section, unless waived under paragraph (d) of this section.

(b) For each environmental program grant included in the Performance Partnership Grant that has a cost share of five percent or less under the provisions of §§ 35.540 through 35.718, the required cost share shall be that identified in §§ 35.540 through 35.718 of this subpart.

(c) For each environmental program grant included in the Performance Partnership Grant that has a cost share of greater than five percent under the provisions of §§ 35.540 through 35.718 of this subpart, the required cost share shall be five percent of the allowable cost of the work plan budget for that program. However, after the first two years in which a Tribe or Intertribal Consortium receives a Performance Partnership Grant, the Regional Administrator must determine through objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the Regional Administrator determines that the Tribe or the members of Intertribal Consortium meets such indicators, then the Regional Administrator shall increase the required cost share up to a maximum of 10 percent of the allowable cost of the work plan budget for each program with a cost share greater than five percent.

(d) The Regional Administrator may waive the cost share required under this section upon request of the Tribe or Intertribal Consortium, if, based on an objective assessment of socio-economic indicators, the Regional Administrator determines that meeting the cost share would impose undue hardship.

§ 35.537 Application requirements.

An application for a Performance Partnership Grant must contain:

(a) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(b) A consolidated budget;

(c) A consolidated work plan that addresses each program being combined in the grant and which meets the requirements of § 35.507.

§ 35.538 Project period.

If the projected completion date for a work plan commitment funded under an environmental program grant that is added to a Performance Partnership Grant extends beyond the end of the project period for the Performance Partnership Grant, the Regional Administrator and the recipient will agree in writing as to how and when the work plan commitment will be completed.

Indian Environmental General Assistance Program (GAP)

§ 35.540 Purpose.

(a) *Purpose of section.* Sections 35.540 through 35.547 govern grants to Tribes and Intertribal Consortia under the Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b.)

(b) *Purpose of program.* Indian Environmental General Assistance Program grants are awarded to build capacity to administer environmental programs for Tribes by providing general assistance to plan, develop, and establish environmental protection programs for Tribes.

§ 35.543 Eligible recipients.

The following entities are eligible to receive grants under this program:

(a) Tribes and

(b) Intertribal Consortia as provided in § 35.504.

§ 35.545 Eligible activities.

Tribes and Intertribal Consortia may use General Assistance Program funds for planning, developing, and establishing environmental protection programs and to develop and implement solid and hazardous waste programs for Tribes.

§ 35.548 Award limitations.

(a) Each grant awarded under the General Assistance Program shall be not less than $75,000. This limitation does not apply to additional funds that may become available for award to the same Tribe or Intertribal Consortium.

(b) The Regional Administrator shall not award a grant to a single Tribe or Intertribal Consortium of more than 10 percent of the total annual funds appropriated under the Act.

(c) The project period of a General Assistance Program award may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient.

Air Pollution Control (Section 105)

§ 35.570 Purpose.

(a) *Purpose of section.* Sections 35.570 through 35.578 govern air pollution control grants to Tribes (as defined in section 302(r) of the Clean Air Act (CAA)) authorized under sections 105 and 301(d) of the Act and Intertribal Consortia.

(b) *Purpose of program.* Air pollution control grants are awarded to develop and administer programs that prevent and control air pollution or implement national air quality standards for air resources within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction.

(c) *Associated program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

§ 35.572 Definitions.

In addition to the definitions in § 35.502, the following definitions apply to the Clean Air Act's section 105 grant program:

Nonrecurrent expenditures are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

Recurrent expenditures are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.573 Eligible tribe.

(a) A Tribe is eligible to receive section 105 financial assistance under §§ 35.570 through 35.578 if it has demonstrated eligibility to be treated as a State under 40 CFR 49.6. An Intertribal Consortium consisting of Tribes that have demonstrated eligibility to be treated as States under 40 CFR 49.6 is also eligible for financial assistance.

(b) Tribes that have not made a demonstration under 40 CFR 49.6 and Intertribal Consortia consisting of Tribes that have not demonstrated eligibility to be treated as States under 40 CFR 49.6 are eligible for financial assistance under sections 105 and 302(b)(5) of the Clean Air Act.

§ 35.575 Maximum federal share.

(a) For Tribes and Intertribal Consortia eligible under § 35.573(a), the

Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's or Intertribal Consortium's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent if the Regional Administrator determines that the Tribe or each member of the Intertribal Consortium meets certain economic indicators that would provide an objective assessment of the Tribe's or each of the Intertribal Consortiums member's ability to increase its share. For a Tribe or Intertribal Consortium eligible under § 35.573(a), the Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

(b) For Tribes and Intertribal Consortia eligible under § 35.573(b), the Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 60 percent of the approved costs of maintaining that program.

(c) Revenue collected under a Tribal Title V operating permit program may not be used to meet the cost share requirements of this section.

§ 35.576 Maintenance of effort.

(a) For Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) of this subpart, the Tribe or each of the Intertribal Consortium's members must expend annually, for recurrent Section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(1) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare a Tribe's or each of the Intertribal Consortium's member's proposed expenditure level, as detailed in the grant application, to its expenditure level in the second preceding fiscal year. When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use this information to determine the Tribe's or Intertribal Consortium's compliance with its maintenance of effort requirement.

(2) If expenditure data for the preceding fiscal year shows that a Tribe or Intertribal Consortium did not meet the requirements of paragraph (a) of this section, the Regional Administrator will take action to recover the grant funds for that year.

(3) The Regional Administrator may grant an exception to § 35.576(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expenditures is attributable to a non-selective reduction of all the Tribe's or each of the Intertribal Consortium's member's programs.

(b) For Tribes and Intertribal Consortia that are eligible under § 35.573(b), the Regional Administrator will not award Section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the Section 105 program.

§ 35.578 Award limitation.

The Regional Administrator will not disapprove an application for, or terminate or annul an award of, financial assistance under § 35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction or, where more than one area is affected, within one of the affected areas within the jurisdiction

Water Pollution Control (Sections 106 and 518)

§ 35.580 Purpose.

(a) *Purpose of section.* Sections 35.580 through 35.588 govern water pollution control grants to eligible Tribes and Intertribal Consortia (as defined in § 35.502) authorized under sections 106 and 518 of the Clean Water Act.

(b) *Purpose of program.* Water pollution control grants are awarded to assist Tribes and Intertribal Consortia in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies.

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

§ 35.582 Definitions.

Federal Indian reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior, exercising governmental authority over a federal Indian reservation.

§ 35.583 Eligible recipients.

A Tribe, including an Intertribal Consortium, is eligible to receive a section 106 grant if EPA determines that the Indian Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act (see 40 CFR 130.6(d)).

§ 35.585 Maximum federal share.

(a) The Regional Administrator may provide up to 95 percent of the approved work plan costs for Tribes or Intertribal Consortia establishing a section 106 program. Work plan costs include costs of planning, developing, establishing, improving or maintaining a water pollution control program.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

§ 35.588 Award limitations.

(a) The Regional Administrator will only award section 106 funds to a Tribe or Intertribal Consortium if:

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 40 CFR 31.45.

(2) The Tribe or each member of the Intertribal Consortium has emergency power authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(3) EPA has not assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in the Tribe's or any Intertribal Consortium member's jurisdiction.

(4) The Tribe or Intertribal Consortium agrees to include a discussion of how the work performed under section 106 addressed water quality problems on Tribal lands in the annual report required under § 35.515(d).

(5) After an initial award of section 106 funds, the Tribe or Intertribal Consortium shows satisfactory progress in meeting its negotiated work plan commitments.

(b) A Tribe or Intertribal Consortium is eligible to receive a section 106 grant or section 106 grant funds even if the Tribe or each of the members of an Intertribal Consortium does not meet the requirements of section 106(e)(1) and 106(f)(1) of the Clean Water Act.

Water Quality Cooperative Agreements (Section 104(b)(3))

§ 35.600 Purpose.

(a) *Purpose of section.* Sections 35.600 through 35.604 govern Water Quality Cooperative Agreements to Tribes and Intertribal Consortia authorized under section 104(b)(3) of the Clean Water Act. These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such cooperative agreements generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment programs and biosolids projects.

§ 35.603 Competitive process.

EPA will award water quality cooperative agreement funds through a competitive process in accordance with national program guidance. After the competitive process is complete, the recipient can, at its discretion, accept the award as a separate cooperative agreement or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the water quality work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.604 Maximum federal share.

The Regional Administrator may provide up to 100 percent of approved work plan costs.

Wetlands Development Grant Program (Section 104(b)(3))

§ 35.610 Purpose.

(a) *Purpose of section.* Sections 35.610 through 35.615 govern wetlands development grants to Tribes and Intertribal Consortia under section 104(b)(3) of the Clean Water Act. These sections do not govern wetlands development grants under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such grants generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards wetlands development grants to assist in the development of new, or the refinement of existing, wetlands protection and management programs.

§ 35.613 Competitive process.

Wetlands development grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of grant applications. EPA reviews applications and decides which grant projects to fund based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a wetlands development program grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.615 Maximum federal share.

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

Nonpoint Source Management Grants (Sections 319(h) and 518(f))

§ 35.630 Purpose.

(a) *Purpose of section.* Sections 35.630 through 35.638 govern nonpoint source management grants to eligible Tribes and Intertribal Consortia under sections 319(h) and 518(f) of the Clean Water Act.

(b) *Purpose of program.* Nonpoint source management grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities that will advance the approved nonpoint source management program.

§ 35.632 Definition.

Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

§ 35.633 Eligibility requirements.

A Tribe or Intertribal Consortium is eligible to receive a Nonpoint Source Management grant if EPA has determined that the Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act (see 40 CFR 130.6(d)).

§ 35.635 Maximum federal share.

(a) The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-federal share of costs must be provided from non-federal sources.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case shall the federal share be greater than 90 percent.

§ 35.636 Maintenance of effort.

To receive funds under section 319 in any fiscal year, a Tribe or each member of an Intertribal Consortium must agree that the Tribe or each member of the Intertribal Consortium will maintain its aggregate expenditures from all other sources for programs for controlling nonpoint source pollution and improving the quality of the Tribe's or the Intertribal Consortium's members' waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

§ 35.638 Award limitations.

(a) *Available funds.* EPA may use no more than the amount authorized under the Clean Water Act section 319 and 518(f) for making grants to Tribes or Intertribal Consortia.

(b) *Financial assistance to persons.* Tribes or Intertribal Consortia may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for

services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the Tribe or Intertribal Consortium receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) The Regional Administrator will not award section 319(h) funds to any Tribe or Intertribal Consortium unless:

(1) *Approved assessment report.* EPA has approved the Tribe's or each member of the Intertribal Consortium's Assessment Report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved Tribe or Intertribal Consortium management program.* EPA has approved the Tribes's or each member of the Intertribal Consortium's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines, for a Tribe or Intertribal Consortium that received a section 319 funds in the preceding fiscal year, that the Tribe or each member of the Intertribal Consortium made satisfactory progress in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the Tribe's or each Consortium member's management program. The Tribe or each member of the Intertribal Consortium must develop this schedule in accordance with section 319(b)(2) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source activity and the work plan commitments to be produced for each category; and

(5) *Significant watershed projects.* For watershed projects whose costs exceed $50,000, the work plan contains:

(i) A brief synopsis of the watershed implementation plan outlining the problems to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures and environmental indicators that will be used to evaluate the results of the project.

Pesticide Cooperative Enforcement (Section 23(a)(1))

§ 35.640 Purpose.

(a) *Purpose of section.* Sections 35.640 through 35.645 govern cooperative agreements to Tribes and Intertribal Consortia authorized under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act for pesticide enforcement.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia in implementing pesticide enforcement programs.

(c) *Associated program regulations.* Refer to 19 CFR part 12 and 40 CFR parts 150 through 189 for associated regulations.

§ 35.641 Eligible recipients.

Eligible recipients of pesticide enforcement cooperative agreements are Tribes and Intertribal Consortia.

§ 35.642 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

§ 35.645 Basis for allotment.

The Administrator allots pesticide enforcement cooperative agreement funds to each regional office. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

Pesticide Applicator Certification and Training (Section 23(a)(2))

§ 35.646 Purpose.

(a) *Purpose of section.* Sections 35.646 through 35.649 govern pesticide applicator certification and training grants to Tribes and Intertribal Consortia under section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Pesticide applicator certification and training grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

§ 35.649 Maximum federal share.

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

Pesticide Program Implementation (Section 23(a)(1))

§ 35.650 Purpose.

(a) *Purpose of section.* Sections 35.650 through 35.659 govern Pesticide Program Implementation cooperative agreements to Tribes and Intertribal Consortia under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia to develop and implement pesticide programs, including programs that protect workers, ground water, and endangered species from pesticide risks and other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Refer to 40 CFR parts 150 through 189 and 19 CFR part 12 for associated regulations.

§ 35.653 Eligible recipients.

Eligible recipients of pesticide program implementation cooperative agreements are Tribes and Intertribal Consortia.

§ 35.655 Basis for allotment.

The Administrator allots pesticide program implementation cooperative agreement funds to each Regional Office. Regional Offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

§ 35.659 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Pollution Prevention Grants (Section 6605)

§ 35.660 Purpose.

(a) *Purpose of section.* Sections 35.660 through 35.669 govern grants to Tribes and Intertribal Consortia under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Grants are awarded to promote the use of source reduction techniques by businesses.

§ 35.661 Competitive process.

EPA Regions award Pollution Prevention Grant funds to Tribes and Intertribal Consortia through a competitive process in accordance with EPA guidance. When evaluating a Tribe's or Intertribal Consortium's application, EPA must consider, among other criteria, whether the proposed program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local

engineering schools or other appropriate means.

§ 35.662 Definitions.

The following definition applies to the Pollution Prevention Grant program and to §§ 35.660 through 35.669:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; or

(3) Reduces or eliminates the creation of pollutants through:

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of national resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

§ 35.663 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a Pollution Prevention Grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of the Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the Pollution Prevention Grants program required by paragraphs (b)(3) and (4) of this section.

§ 35.668 Award limitation.

If the Pollution Prevention Grant funds are included in a Performance Partnership Grant, the Pollution Prevention work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.669 Maximum federal share.

The federal share for Pollution Prevention Grants will not exceed 50 percent of the allowable Tribe and Intertribal Consortium Pollution Prevention project cost.

Public Water System Supervision (Section 1443(a) and Section 1451)

§ 35.670 Purpose.

(a) *Purpose of section.* Sections 35.670 through 35.678 govern public water system supervision grants to Tribes and Intertribal Consortia authorized under sections 1443(a) and 1451 of the Safe Drinking Water Act.

(b) *Purpose of program.* Public water system supervision grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

§ 35.672 Definition.

Tribe. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

§ 35.673 Annual amount reserved by EPA.

Each year, EPA shall reserve up to seven percent of the public water system supervision funds for grants to Tribes and Intertribal Consortia under section 1443(a).

§ 35.675 Maximum federal share.

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the federal share shall not be greater than 90 percent.

§ 35.676 Eligible recipients.

A Tribe or Intertribal Consortium is eligible to apply for a public water system supervision grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

§ 35.678 Award limitations.

(a) *Initial grant.* The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of § 35.676 (Eligible recipients);

(2) Established an approved public water system supervision program or agrees to establish an approvable program within three years of the initial award and assumed primary enforcement responsibility within this period; and

(3) Agreed to use at least one year of the grant funding to demonstrate program capability to implement the requirements found in 40 CFR 142.10.

(b) *Subsequent grants.* The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe or each member of the Intertribal Consortia can demonstrate reasonable progress towards assuming primary enforcement responsibility within the three-year period after initial award. After the three-year period expires, the Regional Administrator will not award section 1443(a) funds to an Indian Tribe or Intertribal Consortium unless the Tribe or each member of the Intertribal Consortia has assumed primary enforcement responsibility for the public water system supervision program.

Underground Water Source Protection (Section 1443(b))

§ 35.680 Purpose.

(a) *Purpose of section.* Sections 35.680 through 35.688 govern underground water source protection grants to Tribes and Intertribal Consortia under section 1443(b) of the Safe Drinking Water Act.

(b) *Purpose of program.* The Underground Water Source Protection grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 124, 144, 145, 146, and 147.

§ 35.682 Definition.

Tribe. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

§ 35.683 Annual amount reserved by EPA.

EPA shall reserve up to five percent of the underground water source protection funds each year for underground water source protection grants to Tribes under section 1443(b) of the Safe Drinking Water Act.

§ 35.685 Maximum federal share.

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the federal share shall not be greater than 90 percent.

§ 35.686 Eligible recipients.

A Tribe or Intertribal Consortium is eligible to apply for an underground water source protection grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

§ 35.688 Award limitations.

(a) *Initial grants.* The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of § 35.676 (Eligible recipients); and

(2) Established an approved underground water source protection program or agrees to establish an approvable program within four years of the initial award.

(b) *Subsequent grants.* The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the four-year period after initial award. After the four-year period expires, the Regional Administrator shall not award section 1443(b) funds to an Indian Tribe unless the Tribe has assumed primary enforcement responsibility for the underground water source protection program.

Lead-Based Paint Program (Section 404(g))

§ 35.690 Purpose.

(a) *Purpose of section.* Sections 35.690 through 35.693 govern grants to Tribes and Intertribal Consortia under section 404(g) for the Toxic Substances Control Act .

(b) *Purpose of program.* Lead-Based Paint Program grants are awarded to develop and carry out authorized programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

§ 35.691 Funding coordination.

Recipients must use the Lead-Based Paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

§ 35.693 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a Lead-Based Paint Program grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of the Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the Lead-Based Paint Program required by paragraphs (b)(3) and (4) of this section.

Indoor Radon Grants (Section 306)

§ 35.700 Purpose.

(a) *Purpose of section.* Sections 35.700 through 35.708 govern Indoor Radon Grants to Tribes and Intertribal Consortia under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) Indoor Radon Grants are awarded to assist Tribes and Intertribal Consortia with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. Indoor Radon Grant funds may be used for the following eligible activities.

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase, by the Tribe or Intertribal Consortium of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent Tribal employees;

(vii) Payment of general overhead and program administration costs;

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including Tribal and Intertribal Consortia participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a Tribe or Intertribal Consortia should make every effort, consistent with the goals and successful operation of the Tribal Indoor Radon program, to give preference to low-income persons.

§ 35.702 Basis for allotment.

(a) The Regional Administrator will allot Indoor Radon Grant funds based on the criteria in EPA guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No Tribe or Intertribal Consortium may receive an Indoor Radon Grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

§ 35.703 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for an Indoor Radon Grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of the Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that a Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the radon grant program required by paragraphs (a)(3) and (4) of this section.

§ 35.705 Maximum federal share.

The Regional Administrator may provide Tribes and Intertribal Consortia up to 75 percent of the approved costs for the development and implementation of radon program activities incurred by the Tribe in the first year of a grant to the Tribe or Consortium; 60 percent in the second year; and 50 percent in the third and each year thereafter.

§ 35.708 Award limitations.

(a) The Regional Administrator shall consult with the Tribal agency which has the primary responsibility for radon programs as designated by the affected Tribe before including Indoor Radon Grant funds in a Performance Partnership Grant with another Tribal agency.

(b) No grant may be made in any fiscal year to a Tribe or Intertribal Consortium which did not satisfactorily implement the activities funded by the most recent grant awarded to the Tribe or Intertribal Consortium for an Indoor Radon program.

(c) The costs of radon measurement equipment or devices (see § 35.820(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.820(b)(1)(ix)) shall not, in aggregate, exceed 50 percent of a Tribe's or Intertribal Consortium's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.820(b)(1)(vii)) of an indoor radon grant shall not exceed 25 percent of the amount of a Tribe's or Intertribal Consortium's Indoor Radon Grant in a fiscal year.

(e) A Tribe or Intertribal Consortium may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

(h) Funds appropriated for section 306 may not be used to cover the costs of federal proficiency rating programs under section 305(a)(2) of the Act. Funds appropriated for section 306 and grants awarded under section 306 may be used to cover the costs of the Tribal proficiency rating programs.

Toxic Substances Compliance Monitoring (Section 28)

§ 35.710 Purpose.

(a) *Purpose of section.* Sections 35.710 through 35.715 govern Toxic Substances Compliance Monitoring grants to Tribes and Intertribal Consortia under section 28 of the Toxic Substances Control Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures on Tribal lands with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Refer to 40 CFR parts 700 through 799 for associated program regulations.

§ 35.712 Competitive process.

EPA will award Toxic Substances Control Act Compliance Monitoring grants to Tribes or Intertribal Consortia through a competitive process in accordance with national program guidance.

§ 35.713 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a Toxic Substances Compliance Monitoring grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of the Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the Toxic Substances Compliance Monitoring grant program required by paragraphs (a)(3) and (4) of this section.

§ 35.715 Maximum federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

§ 35.718 Award limitation.

If the Toxic Substances Compliance Monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

Hazardous Waste Management Program Grants (P.L. 105–276)

§ 35.720 Purpose.

(a) *Purpose of section.* Sections 35.720 through 35.725 govern hazardous waste program grants to eligible Tribes and Intertribal Consortia under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, P.L. 105–276, 112 Stat. 2461, 2499; 42 U.S.C. 6908a (1998).

(b) *Purpose of program.* Tribal hazardous waste program grants are awarded to assist Tribes and Intertribal Consortia in developing and implementing programs to manage hazardous waste.

§ 35.723 Competitive process.

EPA will award Tribal hazardous waste program grants to Tribes or Intertribal Consortia on a competitive basis in accordance with national program guidance. After the competitive process is complete, the recipient can, at its discretion, accept the award as a Tribal hazardous waste program grant or add the funds to a Performance Partnership Grant. If the recipient

chooses to add the funds to a Performance Partnership Grant, the Tribal hazardous waste program work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.725 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Underground Storage Tanks Program Grants (P.L. 105–276)

§ 35.730 Purpose.

(a) *Purpose of section.* Section 35.730 through 35.733 govern underground storage tank program grants to eligible Tribes and Intertribal Consortia under P.L. 105–276.

(b) *Purpose of program.* Tribal underground storage tank program grants are awarded to assist Tribes and Intertribal Consortia in developing and implementing programs to manage underground storage tanks.

§ 35.731 Eligible recipients.

Eligible recipients of underground storage tank program grants are Tribes and Intertribal Consortia.

§ 35.732 Basis for allotment.

The Administrator allots underground storage tank program grant funds to each regional office based on applicable EPA guidance. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

§ 35.735 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

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Federal Register

Tuesday,
January 16, 2001

Part VII

Department of the Interior

Fish and Wildlife Service

Policy on Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AG47

Policy on Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We (U.S. Fish and Wildlife Service) issue a final policy to guide personnel of the National Wildlife Refuge System (System) in implementing the clause of the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act) directing Secretary of the Interior to ensure that the ''biological integrity, diversity, and environmental health'' of the System is maintained. This policy applies to all units of the System. The policy is an additional directive for refuge managers to follow while achieving refuge purpose(s) and System mission. It provides for the consideration and protection of the broad spectrum of fish, wildlife, and habitat resources found on refuges and associated ecosystems. Further, it provides refuge managers with an evaluation process to analyze their refuge and recommend the best management direction to prevent additional degradation of environmental conditions and, where appropriate in achieving refuge purpose(s) and System mission, restore lost or severely degraded components. Lastly, it provides guidelines for refuge managers to follow in dealing with external threats to biological integrity, diversity, and environmental health.

DATES: This notice is effective February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Elizabeth Souheaver, Acting Chief, Division Natural Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; telephone (703) 358–1744. Please note that the full text of the policy appears at the end of this notice. In addition, the chapter will be available on the System web site *Http://refuges.fws.gov,* select link to ''Administration: Federal Register Notices'' * * * then click on ''2001 Notices'' to find ''Biological Integrity, Diversity, and Environmental Health.''

SUPPLEMENTARY INFORMATION:

Disposition

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the Refuge Improvement Act, and offering to send copies of specific draft Fish and Wildlife Service Manual chapters to anyone who would like to receive them. We published a proposed policy notice in the **Federal Register** (65 FR 61356) on October 17, 2000 with a 45-day comment period ending on December 1, 2000. We extended that comment period to December 15, 2000 with a notice published in the **Federal Register** on December 4, 2000 (65 FR 75731).

The proposed policy was derived from Section 5(a)(4)(B) of the Refuge Improvement Act that the Secretary of the Interior ''ensure that the biological integrity, diversity, and environmental health of the System are maintained * * *'' The policy presented in this notice is a final policy that has been modified after consideration of public comment. The finalized policy will constitute part 601 Chapter 3 of the Fish and Wildlife Service Manual.

Purpose of This Policy

The purpose of the policy is to provide guidance for maintaining, and restoring where appropriate, the biological integrity, diversity, and environmental health of the National Wildlife Refuge System.

Response to Comments Received

The combined comment periods totaled 60 days. We received 106 comments from the following sources: Non-governmental organizations (36); State agencies or commissions (31); Federal agencies or facilities (9); local or county governmental agencies (3); and individuals (24). The key points raised by these comments fell into 10 general categories:

- Creation of the term ''ecological integrity'' and its definition:
- Definition of the term ''natural conditions'' and application of the concept in management;
- Impact of the policy on the ongoing refuge management activities;
- Impact of the policy on recreational use of refuges, primarily hunting and fishing;
- Concern that the policy would not meet specific refuge purpose(s) in favor of the System mission or some other management direction;
- Concern that the policy might adversely affect private property rights of refuge neighbors, and does not adequately recognize the State interests in how we manage refuges;
- Confusion regarding management for biological integrity, diversity, and environmental health at various landscape scales;
- Concern that the policy contains too many exceptions;
- General support either for the entire policy or significant elements of it; and
- A collection of other issues.

We read and addressed all the comments in the categories cited above. These comments, as well as any resulting changes to the policy, are cited below. Eight response letters included comments which were not relevant to the policy. These were not addressed.

Issue 1: The Term ''Ecological Integrity''

Comment: Most of the commenters (9 of 14) who cited this term stated that it went beyond the Refuge Improvement Act by creating a term that was not contained in the law or legislative history. Another stated it provided managers too much latitude to threaten private landowners. Still others stated it was too academic and basically unnecessary to meet the requirements of the Refuge Improvement Act. One commenter supported the term but stated the definition needed further refinement pursuant to scientific literature and that we should provide more guidance as to how to measure it.

Response: We never intended for the term ''ecological integrity'' to be more than a convenient means of referencing the terms biological integrity, diversity and environmental health. We agree, however, that as we used the term throughout the policy it appeared to take on meaning beyond the reference to the three terms. We abandoned the term in the final policy and substitute its appearance with the three specific terms as they appear in the law.

Issue 2: The Definition of the Term ''Natural Conditions'' and Its Application in Management

Fifty-nine of 106 commenters made specific references to the definition of natural conditions. Of these, 14 generally favored the concept and the remainder expressed concern about the concept and/or its application in management. An additional 9 commenters indicated general support for the policy overall, thus indicating support for the concept as well. However, even the 14 commenters who specifically endorsed the concept did so with various qualifications or suggestions. Overall, the commenters raised the following concerns:

Comment: A reference period is unnecessary, since the Refuge

Improvement Act merely requires us to maintain the biological integrity, diversity, and environmental health necessary to meet refuge purposes.

Response: We believe the use of a reference point is pivotal to compliance with the mandate of the Refuge Improvement Act to ensure the maintenance of biological diversity, integrity, and environmental health. To implement the Refuge Improvement Act mandate, we needed definitions for the three terms. We believe a reference period is a critical element in these definitions and thus critical to the assessment of current habitat and wildlife conditions.

Comment: A frame of reference from which to manage is a good idea, but as defined and proposed it is unworkable. Five commenters suggested referencing natural dynamics or processes rather than ''conditions;'' and four others suggested using ''historic range of variability'' instead of ''natural conditions,'' as the U.S. Forest Service has done in its ''National Forest System Land Resources Management Planning'' rule. Several who expressed general disfavor with the policy qualified their comments by suggesting they might accept a more historical reference period rather than a 1,000-year period. Several simply stated we needed something more flexible, achievable, and open to interpretation.

Response: In using the term ''natural conditions'' relative to a specific period (*i.e.,* 800 to 1800 AD), we chose an approach with scientific underpinnings very similar to those of the Forest Service. We attempted to go a step further, however, by assigning a specific frame of reference from which to work. Our intent in using the period was not to suggest a return to some particular community or habitat but, in fact, to reference something within the historic range of variability as found within that time frame. Section 3.14 of the draft policy noted that we are interested in the ''scale and frequency of processes,'' and managing or restoring a particular site could include any of a range of successional seres or stages that might have occurred on that site within the 1,000-year time frame. Notwithstanding, the way the draft policy presents this concept clearly created a catalyst for controversy among reviewers, and while nine commenters supported the concept with some variation, the great majority expressed strong concern. Thus, we agree that the term ''natural conditions'' and the implications for management in the framework we have described should be removed from the policy. Instead, we adopted the more general and open-ended term, ''historic conditions,'' which we refer to as the condition of the landscape in a particular area before the onset of significant, human-caused change. See final policy Section 3.12. On that basis, we refined the definitions of biological integrity and environmental health to mean composition, structure and functioning of ecosystems ''comparable to historic conditions.'' The intent is to emphasize not a particular point in time, but the range of ecosystem processes and functions that we believe would have occurred historically.

As developed in the final policy, this ''historic'' framework incorporates those comments that suggested one simply reflect conceptually on what used to be on the landscape before it underwent major change. In this regard, we have reworded language to clearly emphasize the use of the historic perspective as a starting point for assessing the condition of the landscape, the potential for restoration of habitats where appropriate, and the recognition of irrevocable changes that may preclude or greatly limit restoration. We note that where restoration is impractical, the historic perspective, coupled with the refuge purpose(s) and the System mission, may suggest appropriate and useful habitat management alternatives.

Comment: The time frame to be used as a baseline for natural conditions was arbitrarily chosen and speculative. Managing for natural conditions as proposed is effectively managing for a ''snapshot'' in time.

Response: We chose the time frame of 800–1800 in keeping with the Refuge Improvement Act, and it was the result of professional judgment with a scientific basis. We began with two premises: (1) ''Integrity'' and ''health'' suggest nondegraded conditions, and loss of integrity and health constitutes degradation; and (2) Assessing current degradation requires a benchmark or standard from which to measure. Some stated that the benchmarks for a refuge should be the conditions at time of acquisition, but we viewed that as unacceptable since we acquire many refuges in already extremely degraded condition. The point is to have a benchmark against which to assess such condition and that information will provide some suggestion to a refuge manager regarding a management direction as they attempt to repair such degradation. For our benchmark in the draft policy, we carefully chose a roughly 1000-year time frame during which ecological science tells us we could have expected the full historic range of variability to have occurred within the plant communities which form the basis of habitats for wildlife species. We intentionally chose a relatively modern starting point (800 AD) so as to preclude an argument for Pleistocene flora and fauna, and we carefully chose the end point to be somewhere between European settlement and the onset of the industrial era because that period marked the onset of significant and extensive change in landscapes within the continental United States. The period chosen was very recent in a geologic sense, yet encompassed a range of temperature extremes. This was critical since temperature is one of the most important factors determining ecological composition, structure, and functioning. Given the temperature extremes and time period, and the fact that virtually all modern vegetative communities are thought to have been established by then, 800 AD seemed a reasonable and objective choice to initiate the frame of reference. The relatively extensive and rapid environmental degradation so recognizable today began with the land-intensive practices of pre-industrial European settlers, and accelerated rapidly with the onset of the industrial era. Thus, the period between European settlement and the onset of an industrial era presented an objective endpoint to the frame of reference we chose. However, we recognize the confusion and distraction that this time period has caused, and we have abandoned a specific time period in the final policy. We are now using a more open-ended reference to historic conditions (see Section 3.12 in the final policy).

Comment: Managing for natural conditions, however defined, precludes or preempts managing for specific refuge purpose(s) OR in a related vein, because purposes come first and often entail maintenance of highly artificial conditions, the policy becomes one of exceptions.

Response: Despite the many commenters who inferred otherwise, the draft policy was not intended to be a mandate for refuges to give up current management practices and return to ''natural conditions.'' (See Issue 3: Implications for Refuge Purpose(s) and System Mission below.) One of the difficulties of developing the proposed policy was reconciling the highly artificial and intensively managed nature of many refuges with the Refuge Improvement Act's mandate that we ensure the biological integrity, diversity and environmental health of such refuges. Given the historical needs and thus purpose(s) for which refuges were established, there are indeed a variety of management circumstances directing refuge management. This policy does

not instruct managers to ignore refuge purpose(s). Rather, it says that when they select management actions that fulfill purpose(s), they should do so following as closely as possible the guidelines provided in this policy while still keeping their obligations to purpose(s) at the forefront. The final policy also emphasizes that much land on a refuge is not directly manipulated in pursuit of purpose(s) and thus managers often have much leeway to protect such tracts from further degradation and, where appropriate and feasible, to restore them as nearly as possible to communities and habitats that might reasonably be thought to have existed historically.

Ultimately, the final policy resolves much of this concern by using ''historic conditions'' rather than ''natural conditions,'' and by emphasizing the historical perspective as primarily a starting point for choosing management directions and strategies. Also, in the final policy, we have changed any language which might mistakenly be interpreted as directing a return to natural conditions as a management mandate.

Comment: There is no quantitative ecological data available for the 1,000-year reference period. Thus managers would often manage from speculative, often undocumented accounts, and would have nothing quantitative from which to measure progress towards objectives.

Response: Most ecological information is a mixture of quality and quantity, and information on natural conditions is likewise. For example, qualitative information includes which types of plant communities existed in an area during the frame of reference, while quantitative information includes acreage estimates for such plant communities. The final policy continues to provide managers with suggested sources for historic information. However, managers will make the final decisions for determining historic conditions based on sound professional judgment.

Comment: Natural conditions, as defined, are simply not attainable in today's highly altered landscapes, particularly on intensively managed refuges.

Response: The intent of the draft policy was not to attain or re-create natural conditions, but to use natural conditions as a frame of reference for maintaining existing levels of biological integrity (including natural levels of biological diversity) and environmental health. The final policy clearly states our intent to prevent further degradation from historic conditions of biological integrity, diversity and environmental health. We indicate this in Section 3.7 D. of the final policy.

Comment: The policy discounts or ignores the role of humans, especially Native Americans, in shaping landscapes, and implies that there is no place for humans in modern landscapes restored to or managed for natural conditions.

Response: We see that the most natural, intact, and functioning systems are those that have not been impacted by extensive and intensive landscape alterations. Recognition of human impacts on the landscape demonstrates the difference between ecosystems functioning today versus those found prior to substantial landscape changes. We use this information to inform and encourage managers to reflect on the natural ecosystem functions and processes that are necessary to maintain or restore the most viable ecosystem function or processes, and especially those that are necessary to achieve refuge purposes and the System mission. Permanent human alterations to the landscape are a reality and may not be restored and must be managed to maintain the existing levels of biological integrity, diversity and environmental health.

Issue 3: Implications for Refuge Purposes and System Mission

Comment: We received several comments addressing concerns that this policy would have impacts on refuge purposes or affect the System mission. There were 17 comments that interpreted this policy as having a negative impact on refuge purposes; these ranged from some interpretations that this policy would replace refuge purposes to a concern that the policy does not clearly emphasize the priority of refuge purpose(s) over ecological integrity.

Response: In response, we changed the final policy Section 3.7 B. from ''Maintaining Biological Integrity of the System and Accomplishing Refuge Purposes,'' to ''Accomplishing Refuge Purposes and Maintaining Biological Integrity, Diversity, and Environmental Health of the System.'' Further, Section 3.7 B. clearly states the priorities for refuge purposes, System mission, and maintenance of biological integrity, diversity and environmental health.

Comment: One commenter felt that the Ecological Integrity Policy and Refuge Improvement Act should take precedence over, or replace refuge purpose(s).

Response: The fulfillment of refuge purpose(s) is a nondiscretionary statutory duty of the Service. However, the law also requires that we ensure that the biological integrity, diversity, and environmental health of the System is maintained, and therefore, this is an additional duty which we must fulfill as we endeavor to achieve refuge purpose(s) and System mission.

Comment: We received one comment concerning discrepancies between System mission and refuge purpose(s) which inquired as to how often we evaluate and change refuge purpose(s).

Response: Typically, the fulfillment of refuge purpose(s) is consistent with achieving the System mission, but where there are exceptions, refuge purpose(s) take precedence. We evaluate refuge purpose(s) prior to any significant actions proposed on a refuge, but refuge purpose(s) do not change.

Comment: There were two comments that perceived a conflict between the statement that ''we may compromise the ecological integrity of a refuge for the sake of maintaining a higher level of ecological integrity at the System scale'' and the statement that ''conflicts will be resolved in a manner that first protects the refuge purpose(s).''

Reponse: This is a comparison of different issues. We have statutory obligations to fulfill refuge purpose(s) and to protect the biological integrity, diversity and environmental health of the System. Basically, the sentences are meant to convey that biological integrity, diversity and environmental health on an individual refuge may sometimes be compromised when a purpose requires alterations of the landscape to accommodate a broader System need (such as intensively managed feeding or resting areas for migratory waterfowl). In such a case, addressing the flyway needs of waterfowl provide diversity and integrity at a larger landscape.

Comment: Another comment was received expressing concern that promoting ecological integrity of the System might have impacts on ecological integrity for specific refuges.

Response: This is, in fact, the case as noted above. It may sometimes be necessary to compromise the biological integrity, diversity, and/or environmental health of a given refuge in favor of the greater resource needs at the System landscape scale. We will not, however, compromise the fulfillment of individual refuge purposes.

Issue 4: Impacts on Public Use, Especially Hunting and Fishing

We received 34 letters that addressed the relationship between the draft policy and its relationship to public uses on refuges and public use as

mandated under Refuge Improvement Act.

Comment: More than half of these letters (17) were concerned that the policy, as drafted, would interfere with or eliminate hunting and fishing on refuges while another 13 letters were concerned that this policy would affect or find all public uses incompatible with ecological integrity.

Response: We did not write the draft policy with the intent or direction to eliminate hunting, fishing, or other priority public uses recognized by the Refuge Improvement Act. This draft policy rarely mentions public use, but where it does, the purpose is for refuge managers to consider impacts on wildlife and habitat (*i.e.,* biological integrity, diversity, and environmental health) when implementing public uses. The authority for this draft policy is the Refuge Improvement Act, which also clearly identifies hunting and fishing as priority public uses. Section 2.(6) of the Refuge Improvement Act states, ''When managed in accordance with principles of sound fish and wildlife management and administration, fishing, hunting * * * in national wildlife refuges have been and are expected to continue to be generally compatible uses.'' In order to clearly address concerns over priority public uses, we have added Section 3.7 G. ''Principles Underlying This Policy, Public Use'', to the final policy. A summary of this section is as follows: The Service reiterates the importance of the public being able to utilize refuges for those priority public uses, including hunting and fishing. The six priority wildlife-dependent public uses identified in the Refuge Improvement Act are generally not in conflict with management for the biological integrity, diversity, and environmental health when compatible with refuge purpose(s). Restoration of historical landscapes as they appeared prior to significant disturbance does not generally mean exclusion of visitors. But we direct refuges to use spatial or temporal zoning to manage public visitation in a way that it complements efforts to protect and, where appropriate, restore historic habitats and wildlife populations. In addition, fishing programs on refuges will not be terminated in pursuit of biological integrity, diversity, and environmental health because managed fishing programs on refuges do not impact fish population viability.

Comment: A few letters specifically question the relationship between ecological integrity and compatibility determinations used for permitting hunting and fishing.

Response: We determine compatibility of a priority public use on a refuge by comparing that use to the purpose of the refuge and the mission of the System. If we determine a use to be compatible, then we facilitate it. However, that does not preclude administration of those public uses in such a way as to promote biological integrity, diversity, and environmental health, and the Refuge Improvement Act directs managers to do so. In such cases, a refuge may carefully plan the location, size, and use of structures for an environmental education program, for example, perhaps adopt hunting regulations (*e.g.,* antlerless deer hunts) more restrictive than those of a respective State. Because the use of the words ''conflict with'' confused this issue, we have deleted the sentence that contains it.

Comment: There also were a few letters that felt the policy will find public use structures such as boardwalks, roads, observation towers, and similar facilities in conflict with ecological integrity. The draft policy says that ''Where feasible, we also pursue ecological integrity by eliminating unnatural biotic and abiotic features and processes not necessary to accomplish refuge purposes.''

Response: The purpose of this section of the policy is for managers to consider ways to minimize impacts on biological integrity, diversity, and environmental health when planning structures and facilities by placing them in the most suitable location to allow quality public use while still ensuring biological integrity, diversity, and environmental health.

Comment: A few letters thought that hunting, fishing and trapping should not be permitted on refuges because they interfere with ecological integrity, while one letter wanted ''trapping'' added to Section 3.14 where hunting and fishing are encouraged in cooperation with State fish and wildlife management agencies.

Response: The six priority wildlife-dependent uses are given special status by the Refuge Improvement Act, which specifically recognizes hunting, fishing, wildlife observation, photography, interpretation, and environmental education. Refuges must facilitate these uses when compatible. The Refuge Improvement Act does not similarly recognize trapping.

Issue 5: Implications for States and Other Partnerships

Comment: Various States commented that the policy should place emphasis on cooperation and coordination with States in the management of wildlife populations on refuges.

Response: Strong partnerships with the respective States are an essential part of all refuge planning and management, including the maintenance of biological integrity, diversity, and environmental health of refuges. We encourage and expect managers to forge effective partnerships with States through cooperation and coordination in the management of wildlife habitats and populations found on refuges. We have changed the language in the final policy, Section 3.14, to more clearly state this expectation.

Issue 6: Implications for Private Property Rights

Comment: Several commenters were concerned that the policy was not mindful of the property rights of others and encouraged managers to seek resolutions to problems injuring resources on refuges through litigation.

Response: We changed Section 3.20 of the final policy to emphasize that the preferred course of action for managers in cases of injury to refuge resources from outside sources is first to seek cooperative resolution to such conflicts through neighborly discussion, negotiation, and consultation. This includes working with State or local agencies and other third party interests to seek solutions of mutual satisfaction. The revised policy offers several steps for a manager to take in this regard. Ultimately, however, and with full respect of private property rights, we recognize our responsibility to protect the property and resources of the American public, and state the responsibility to do so.

Issue 7: Implications for Wildlife and Habitat Management on Refuges

Comment: We received many comments which expressed concern about the role of active management on refuges under the proposed policy. These comments noted that active management is often necessary to achieve refuge purpose(s). Some felt management for natural conditions basically implied an absence of management and would, therefore, conflict with achieving refuge purpose(s). Comments also noted that numerous refuges are located in highly altered landscapes where active management is needed to maintain wildlife values of the refuge. A few comments identified that active management actions are required to maintain desirable wildlife populations where habitats surrounding the refuge have been degraded.

Response: We acknowledge that active management is often critically important to achieve refuge purpose(s). We also acknowledge that at some refuges very intensive management actions are required to maintain high densities of some wildlife species. We will continue active management where needed. However, we will evaluate management practices on all refuges to ensure that we take appropriate management action to achieve refuge purpose(s), while at the same time addressing the guidelines identified in the final policy.

Comment: Numerous comments noted that identifying ''natural conditions'' during the time period 800 AD to 1800 AD and then managing for conditions identified during that period was inappropriate and was contrary to Service mandates to achieve refuge purpose(s) which necessitate active management.

Response: As noted throughout the policy and in above responses to comments (see Issue 3: Implications for Refuge Purpose(s) and System Mission), nothing in this chapter places management for biological integrity, diversity, and environmental health above refuge purpose(s). However, we still need a reference period to assess the condition of a refuge and to provide a management perspective. In the final chapter, we propose to use historic conditions to assess the status of refuges in relation to conditions present before man substantially altered the landscape. We will use this historic reference to identify appropriate ranges of habitats that may occur at a refuge, which species of wildlife should occur, and what processes that shaped these habitats still exist. We will maintain processes which are still extant. We will mimic processes which no longer exist or have been altered in our management actions or, where appropriate and feasible, restore them if possible. Due to the highly altered landscapes in which many refuges exist, we acknowledge that extensive active management actions are required to mimic these natural processes to achieve refuge purpose(s). We also acknowledge that numerous refuges have been so drastically altered that it may be infeasible to restore the historic conditions of biological integrity, diversity, and environmental health.

Comment: Other commenters were concerned that the extent and types of active management were left too much to the discretion of the Refuge Manager. They felt that such discretion would lead to inconsistencies in refuge management practices.

Response: The Refuge Manager is the first line manager responsible for all aspects of management of a refuge. The Refuge Manager is the individual most knowledgeable about conditions at each refuge. It is the manager's responsibility to identify appropriate management for the refuge. However, we acknowledge that inconsistencies do occur. To minimize this concern, we have instituted numerous review and approval processes for what managers propose. Examples of these review and approval processes are refuge management plans, Comprehensive Conservation Plans, National Environmental Policy Act guidelines, Endangered Species Act, Section 7 regulations and guidance, and individual refuge program reviews. All of these require some form of Regional Office oversight and/or public input and comment.

Comment: A few comments were concerned that refuges should not manage for natural densities, age structures, and sex ratios of large ungulates and other fish and wildlife populations mainly because this may not be in keeping with State management objectives and or may not be feasible.

Response: The final policy directs refuges to work cooperatively with the States devising appropriate harvest strategies to achieve these objectives, recognizing that the refuge management objectives may differ from those of the State. In such cases, refuges may implement regulations more restrictive than those of their respective States in pursuit of more natural sex and age structures. We will not take such actions without consulting State fish and wildlife management agencies.

Comment: A few comments identified concerns for public health, related to natural production of insects which are vectors of disease. It was proposed that management of vector populations should be included in this policy in a manner that is consistent with protection of the natural resources that exist within the refuge.

Response: We also are very much concerned about threats to human health. However, our mandate is to manage for ''Wildlife First,'' and in numerous situations management to eliminate or reduce insect vectors will adversely impact the quality of food chains and wildlife habitats at a refuge, so we intend to continue to follow our current policy of taking action to reduce vector populations only when needed to address a Declared Human Health Emergency. We are working with agencies responsible for vector control to identify vector management practices, which we can use on refuges while not compromising the purpose(s) of the refuge or System mission. In emergency events, such as a Declared Human Health Emergency, the Service and responsible agencies will work together to address these situations.

Comment: One comment addressed the need to introduce large predators to maintain some wildlife populations.

Response: We agree that predators are an important component of System biological integrity and diversity. To this end, we have undertaken programs to reintroduce predators to some refuges where this action is feasible. At other refuges, efforts are being made to maintain declining populations of some predatory species. Where introductions of large predators may be feasible at a refuge, we would undertake a thorough public scoping process to identify how this action may impact local communities. In cases where key predator species cannot be feasibly reintroduced, we may employ management practices, including hunting programs, to both provide recreational opportunity and improve biological integrity by maintaining natural densities of certain wildlife prey species.

Issue 8: Implications of Policy at Different Landscape Scales

Comment: There were 12 letters that raised issues of scale and the definitions and references to landscapes.

Response: Use of the term ''local landscape'' in the draft policy caused some confusion among these commenters. We intended the term to describe the refuge and its immediate surroundings. In the final policy, we dropped the ''landscape'' part of the term and use ''local scale'' or ''refuge scale'' to refer to a refuge and the area around it.

Comment: The majority of other comments on this issue related to how integrity will be maintained at various scales.

Response: It is important to stress that this policy does not authorize or suggest that refuge staff will manage lands outside their boundaries. However, it does provide clear direction that refuge managers must examine the context of their management actions at the refuge scale and all scales up to the international scale. Within each refuge there is a certain amount of biological diversity, integrity, and environmental health that contribute to these conditions at a local scale. However, as part of larger systems, each refuge must examine its contributions to objectives that have been developed at larger scales through initiatives such as the

North American Waterfowl Management Plan or Partners in Flight. Refuges must continually reassess their contributions in light of new information and new initiatives, such as the North American Bird Conservation Initiative. As noted throughout the policy, refuges must seek to identify their most important contributions to these higher levels. Sometimes this will mean sacrificing biological diversity and integrity at the local scale in order to contribute to diversity at a larger scale, while at all times managing for refuge purpose(s).

Comment: Two reviewers asked for definitions of landscapes within which refuges will operate.

Response: There is no single answer to this question. Refuges operate at many different scales, and landscapes are not always defined the same way. For example, we develop our ecosystem teams within major watersheds, while Bird Conservation Regions of the North American Bird Conservation Initiative are defined using ecoregions developed by the Commission for Environmental Cooperation. The continual challenge for refuge managers is to achieve refuge purpose(s) while evaluating the refuge's most significant contributions to regional, national, and international goals and objectives.

Comment: One reviewer observed that the System is not an ecological system.

Response: This is true. It is a System of lands that is administratively bound together and for which the Refuge Improvement Act has set certain standards for management. While not all refuges are connected ecologically, many refuges are, particularly those located along migratory bird pathways. This policy directs those refuges that are connected ecologically to examine their roles in the context of purpose(s), but also in the context of maintaining, and when appropriate, restoring biological integrity, diversity, and environmental health at all levels. In doing so, all refuges contribute to the maintenance of biological integrity and diversity, and environmental health, of the System.

Issue 9: Other Issues

Sixty-two commenters raised numerous ''other'' issues and concerns in addition to those major categories addressed above. Typically, any given concern was addressed by perhaps 10 or fewer commenters. We group these as ''other'' issues and address them below:

Comment: Seven commenters raised the concern that the policy will have a profound effect on local tax bases, local economies, and property rights through land protection and acquisition. They expressed fears about land acquisition and managers pursuing civil action against neighbors whose actions damage refuge resources. Three felt the policy constitutes a significant Federal action under NEPA and requires an environmental impact statement.

Response: We feel these fears are ungrounded. The policy will not accelerate the rate of land acquisition within the System. The policy creates no new authorities for refuge managers, nor do we expect it to create significant new conflicts among managers and private landowners. On the contrary, it emphasizes partnerships and similar cooperative avenues to resolve conflicts (See Issue 6: Implications for Private Property Rights). Section 3.20 of the final policy emphasizes that we will take any resolution of conflicts with full respect of private property rights. We will follow NEPA guidelines when refuge managers implement this policy in refuge Comprehensive Conservation Plans, compatibility determinations, and other interim management plans.

Comment: The definition of ''sound professional judgment'' is unnecessary or goes beyond the Refuge Improvement Act. Seven commenters made these remarks, including one who believed the concept of allowing individual managers to interpret management needs was unsafe because of their different backgrounds and biases. Another believes the policy should incorporate more oversight of refuge managers to address this concern and let comprehensive conservation planning (CCP) teams make judgments. Another wanted to know who a refuge manager might consult with outside the Service in making management decisions.

Response: We deleted the term ''sound professional judgment'' from the definitions of the final policy because we already defined it in the Compatibility chapter (see 603 FW 2). We maintained the term as integral to the final policy, which we believe is in keeping with the Refuge Improvement Act. We concur that refuge managers will make different interpretations of management needs in different situations, and there is value to group processes. However, we must still empower refuge managers to make the decisions inherent to administering a refuge. The refuge manager is the individual with the most holistic, on-the-ground knowledge of the circumstances surrounding management operations. It is typical for refuge managers to maintain close working relationships with State agencies, neighboring landowners, academics, conservation organizations, and/or local government, many of whose concerns are addressed in choosing management direction.

Comment: The policy is not properly presented in the context of the Refuge Improvement Act and other policies. Six commenters stated the policy inappropriately elevates the Refuge Improvement Act's mandate to ''ensure * * * biological integrity, diversity and health'' above thirteen other directives found in Section 5 of the Refuge Improvement Act. Some also felt we should explain how the policy will be interpreted in the context of other Service policies.

Response: The policy on biological integrity, diversity, and environmental health is a new policy which has not previously existed in other forms. We already address virtually all other directives of the Refuge Improvement Act in some form in existing policies, which we are updating as necessary to incorporate these directives. The policy is not intended to elevate biological integrity, diversity and environmental health above the other directives, though we do believe and state in Section 3.7 A. of the final policy that biological integrity, diversity and environmental health are ''intrinsic and high priority components of wildlife conservation'' and thus important to the ''Wildlife first!'' principle.

Comment: Two comments voiced the concern that we provide no direction for measuring and evaluating results.

Response: We provide ample guidance on management through goals and objectives and adaptive management in 602 FW 1–4 (policies related to comprehensive conservation planning) and the related Writing Refuge Management Goals and Objectives: A Handbook. Section 3.19 B. of the final policy specifies that we will develop goals and objectives for maintaining biological integrity, diversity, and environmental health into Comprehensive Conservation Plans.

Comment: Eight commenters expressed some variation of ''The policy is unfocused, ambiguous, not achievable, and a catalyst for litigation.''

Response: We feel the various changes to the policy incorporating such comments (*e.g.,* use of ''historic conditions'' rather than ''natural conditions,'' modification of the frame of reference, etc.) have addressed this concern by simplifying and focusing the language.

Comment: One commenter held the view that this policy is unnecessary.

Response: We disagree based on the Refuge Improvement Act mandate.

Comment: One commenter commented on the use of prescribed fires and wildfires * * * that the policy might result in greater use of prescribed fire as a management tool, and noted

that use of fire must include consideration of air quality impacts.

Response: Fire is already a much-used and significant management tool on refuges, and we do not anticipate a marked increase in its use as a result of this policy. Coordination of controlled burns with State air quality agencies is standard procedure for refuges, and that will not change under this policy.

Comment: One commenter stated we should avail ourselves of new technology, regardless of whether it mimics nature.

Response: We disagree that all new land management technology is appropriate for refuges. We encourage refuges to utilize the tools that are available and most efficient for accomplishing refuge objectives while remaining in compliance with existing policy.

Comment: One commenter held the view that the policy ''second guesses'' nature by promoting the creation of natural disasters like floods and fires.

Response: The policy promotes mimicking the results of such disasters through the application of prescribed fires and moist soil management. It does not advocate creating them on historic scales.

Comment: How do we deal with native but nonindigenous species that utilize the ''artificial'' habitats created by much of traditional refuge management? Two commenters noted that such species now utilize niches created in habitats that did not exist historically.

Response: We often create such habitats on refuges in order to accomplish a refuge-specific purpose (*e.g.,* creation of marsh habitat where none previously existed). As noted in various places throughout the draft and final policies, actions taken in pursuit of purpose(s)—and by implication the results of those actions—(*e.g.,* the population of new habitats by species which do not previously occur in an area) take precedence over any conflicting elements of this policy.

Comment: We received one comment that the Endangered Species Act is minimized in the policy and not elevated above other refuge priorities.

Response: We recognize several statutes, including the Endangered Species Act, that provide direction for management of national wildlife refuges. We expect refuge managers to follow all relevant environmental compliance statutes in the execution of this policy.

Comment: One commenter voiced the concern that Section 3.10 unnecessarily references ''evolution'' as part of the natural processes on refuges.

Response: We disagree because it does not detract from the policy, and we feel that it is relevant.

Comment: Relationship to the ''Wildlife First!'' principle: Four commenters addressed the relationship between biological integrity, diversity and environmental health and the ''wildlife first'' mandate of the Refuge Improvement Act. One wanted the ''wildlife first'' idea removed in favor of public uses. Others agreed with the ''wildlife first'' principle, but not to the diminution of public use.

Response: This would be in conflict with the purpose and mission of refuges and the Refuge Improvement Act that clearly place wildlife and habitat as the first priority on refuges. These concerns were addressed in the above section on public use (Section 6: Impacts on public use, especially hunting and fishing).

Comment: One commenter voiced the concern that the policy attempts to nullify important elements of the Alaska National Interest Lands Conservation Act (ANILCA), referencing two elements of the draft policy that seemed to imply this. First was the draft policy's heavy emphasis on ''natural conditions,'' which the commenter interpreted as a ''back to nature policy.''

Response: While we believe the commenter misinterpreted the draft policy, we nevertheless abandoned the concept of ''natural conditions'' in favor of the more appropriate and open-ended ''historic conditions'' and clarified the way this frame of reference would be utilized in management. Second, the commenter felt the draft policy was anti-public use, and thus in opposition to ANILCA. We have clarified this by adding ''recognizing public use as an underlying principle of biological integrity, diversity and environmental health'' in Section 3.7 G. of the final policy. That section emphasizes the appropriateness of public use on refuges and clarifies the relationship between public use and biological integrity, diversity, and environmental health. In any case, Section 9 of the Refuge Improvement Act explicitly reiterates support for ANILCA by noting that any conflicts between the two Acts will be resolved in favor of ANILCA. The present policy cannot override the statutory language.

Comment: One commenter felt the biological integrity discussion is inadequate. Section 3.10A. of the draft policy should be expanded to include the ''natural functioning of ecosystems'' and the ''spatial distribution of species within a landscape'' and should also ''incorporate ecosystem service provided by fully functioning natural ecosystems.''

Response: We feel our discussion in the final policy implicitly and adequately includes these concepts as written. The same commenter felt we should recognize the value of recolonization by native species over physical reintroductions of such species. We concur with the commenter and favor recolonization where source populations are available; however, where no such source is available, we advocate reintroduction.

Comment: The policy needs to be simplified.

Response: We concur and incorporated significant changes into the final policy to accomplish this. Most notably, we modified the definition of ''natural conditions'' to ''historic conditions'' and deleted extensive sections of text in support of natural conditions. We simplified related definitions, and we added language to clarify the relationships among refuge purpose(s), public use, and ''biological integrity, diversity, and environmental health.''

Comment: What are the ramifications regarding State water rights, as well as State and local flood control projects? One commenter inquired as to how the policy might direct a manager to address water development upstream of a refuge that diverted water from a refuge. On a similar but opposite note, another commenter was concerned the policy would not allow diversion of flood waters onto refuges should the need arise as part of a local flood control effort.

Response: Nothing in either the draft or final policies is meant to suggest we will attempt to override or change the legitimate existing water rights of any party. However, if the actions of any party impinge on our legal water rights, we will take action to defend those rights as necessary. We expect refuge managers to review all controlling legal authorities, including appropriate statutes, establishing purposes, relevant Service policy, binding contracts and other legal considerations before entering into agreements regarding flood control and related issues. The present policy will not alone determine a course of action here, but rather the sum of all such considerations. Managers will undoubtedly take such action only in close consultation with their Regional solicitor.

Comment: In a comment concerning draft policy's emphasis of on-refuge research over off-refuge research, one letter believed Section 3.7G. (''Adaptive Management'') of the draft policy inappropriately emphasized on-refuge research, and noted research off-refuge has value as well.

Response: We concur; however, in the final policy, we abbreviated the discussion of ''Adaptive Management'' and removed the references to research and other specific elements in the interest of brevity, so the question is moot.

Comment: Refuges should manage for as many species as possible once purposes are met. One commenter felt Section 3.11 of the draft policy should permit the introduction of as wide an array of species as possible on refuge, specifically any species that is in decline, whether or not it is listed.

Response: We disagree. Such an approach would produce diffuse and unfocused management, as well as defeat the intent of the present policy. Threatened and endangered species provide a clear, statutory responsibility not present with nonlisted species.

Comment: Several commenters felt that the draft policy ignored the role of humans in the ecosystems.

Response: Neither the draft nor final policy ignores the role of humans, but both imply that prior to European settlement and subsequent industrialization of the United States, humans existed in a somewhat steady state with the environment. While they indeed had a effect, smaller and more dispersed populations and lack of mechanized technology produced more of a harmony than we see today. The policy addresses the significant changes to landscapes that have occurred since European settlement.

Comment: One commenter felt the policy ignored ongoing significant ecological phenomena like glaciers.

Response: Section 3.14 of the draft policy states that we do not attempt to ''correct'' natural phenomena like volcanic eruptions and naturally impounded water. Both the draft and final policies recognize natural processes throughout without regard to scale.

Comment: One commenter felt that biological integrity, as the draft policy defines it, is not a major component of wildlife conservation.

Response: We disagree based on best available science.

Comment: Two commenters felt the policy should include a planning element to assure refuges address the practical considerations of meeting their purposes in the face of changing future conditions or to examine ways to balance the various management alternatives open to refuges under this policy.

Response: Other Service policies on comprehensive conservation planning (see 602 FW 1–4) provide a process for incorporating and reconciling refuge purposes with the requirements of this policy.

Comment: Several commenters expressed concern that refuges do not have adequate staff or funds to meet the requirements of this new policy. One felt the policy will distance staff from their basic, more important administrative functions.

Response: We believe such concerns reflect a misinterpretation of the policy. In some regards, managing pursuant to this policy may require more staff, funds, or planning time; however, other changes in management philosophy, direction, or strategies will reduce staff and funds being expended on existing efforts. We also believe implementation of this policy is integral to the basic administration of a refuge.

Comment: The System's contribution to conservation should be that of a laboratory and teaching facility rather than conservation area. One commenter suggested wildlife can only be ''saved'' on private lands, so refuges should be dedicated to research, teaching, and extension.

Response: We believe this view to be counter to statutory mandate for the System found in the Refuge Improvement Act, as well as contrary to the long history and institutional culture of individual refuges and the System overall. Virtually all refuges are facilities for research, teaching, and outreach; but they also fulfill a vital conservation role among the broad mosaic of wildlife and habitat conservation efforts throughout the United States.

Comment: Thirteen commenters suggested we either withdraw the policy altogether or else withdraw it unless we incorporate significant changes.

Response: The final policy incorporates significant revisions that were meant to address the extensive concerns voiced about natural conditions, public uses, and partnerships with States and private landowners. Given this, we feel the policy merits publication.

Comment: Issues not relevant to the policy: Many reviewers, while addressing various aspects of the policy, expressed concerns such as tribal rights, taking of endangered species, refuge funding and administration, etc.

Response: We do not believe these concerns were applicable to the policy.

Issue 10: General Support

Nineteen commenters expressed general support of the draft policy as written, although 12 individuals qualified their support in various ways, suggesting different treatment of ''natural conditions,'' more specifics on public use, more clarity or language, etc. These supportive respondents were from a cross section of categories: four Federal agencies, five State agencies, four environmentally-oriented, non-governmental organizations, one sportsman's group, two academics, and three private individuals. One additional State natural resource agency specifically supported Section 3.7F. ''Wildlife and Habitat Management.'' Additionally, several commenters specifically supported our proposal to manage ungulate populations for natural sex and age structure.

Supportive comments included the following: ''* * * the draft policy was well written and understandable;'' ''* * * it establishes new and overdue philosophy;'' ''* * * it promotes wildlife first and active management when necessary;'' ''* * * it ensures consistency;'' ''* * * it is flexible;'' ''* * * it is scientifically credible and balanced;'' ''* * * it promotes landscape-scale conservation by allowing refuges to manage for habitats lost in other parts of the landscape, it allows for maintenance of a variety of habitat stages;'' and ''* * * it promotes cooperation with States, and it will help refuge managers implement the Refuge Improvement Act.''

One supportive reviewer suggested that we expand the summary and clarify it to ensure that we emphasize the most important aspects of the policy. We revised the summary to incorporate this and other comments. Two reviewers suggested that the draft policy deals effectively with deer management issues. Two reviewers mentioned concerns about implementation but otherwise expressed general support.

Issue 11: Extension of Comment Period

Comments: Fourteen letters were received requesting an extension of the comment period, from 45 to 120 days. Four made open-ended extension requests, *i.e.,* with no extension period specified.

Response: We extended the period by 15 days, for a total comment period of 60 from the date of first publication.

The text of the final policy follows:

Fish and Wildlife Service

National Wildlife Refuge System

Refuge Management—Part 601 National Wildlife Refuge System

Chapter 3—Biological Integrity, Diversity, Environmental Health 601 FW 3

3.1 What Is the Purpose of This Chapter?

This chapter provides policy for maintaining, and restoring where

appropriate, the biological integrity, diversity, and environmental health of the National Wildlife Refuge System.

3.2 What Is the Scope of This Policy?

This policy applies to all units of the System.

3.3 What Is the Biological Integrity, Diversity, and Environmental Health Policy?

The policy is an additional directive for refuge managers to follow while achieving refuge purpose(s) and System mission. It provides for the consideration and protection of the broad spectrum of fish, wildlife, and habitat resources found on refuges and associated ecosystems. Further, it provides refuge managers with an evaluation process to analyze their refuge and recommend the best management direction to prevent further degradation of environmental conditions; and where appropriate and in concert with refuge purposes and System mission, restore lost or severely degraded components.

3.4 What Are the Objectives of This Policy?

A. Describe the relationships among refuge purposes, System mission, and maintaining biological integrity, diversity, and environmental health.

B. Provide guidelines for determining what conditions constitute biological integrity, diversity, and environmental health.

C. Provide guidelines for maintaining existing levels of biological integrity, diversity, and environmental health.

D. Provide guidelines for determining how and when it is appropriate to restore lost elements of biological integrity, diversity, and environmental health.

E. Provide guidelines to follow in dealing with external threats to biological integrity, diversity, and environmental health.

3.5 What Are Our Authorities for This Policy?

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act)

The authority for this policy is the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee (Refuge Administration Act). Section 4(a)(4)(B) of this law states that ''In administering the System, the Secretary shall * * * ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans * * *.'' This is one of 14 directives to the Secretary contained within the Refuge Administration Act.

3.6 What Do These Terms Mean?

A. *Biological diversity.* The variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.

B. *Biological integrity.* Biotic composition, structure, and functioning at genetic, organism, and community levels comparable with historic conditions, including the natural biological processes that shape genomes, organisms, and communities.

C. *Environmental health.* Composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the natural abiotic processes that shape the environment.

D. *Historic conditions.* Composition, structure, and functioning of ecosystems resulting from natural processes that we believe, based on sound professional judgment, were present prior to substantial human related changes to the landscape.

E. *Native.* With respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

3.7 What Are the Principles Underlying This Policy?

A. Wildlife First

The Refuge Administration Act, as amended, clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission. House Report 105–106 accompanying the National Wildlife Refuge System Improvement Act of 1997 states ''* * * the fundamental mission of our System is wildlife conservation: wildlife and wildlife conservation must come first.'' Biological integrity, diversity, and environmental health are critical components of wildlife conservation.

B. Accomplishing Refuge Purposes and Maintaining Biological Integrity, Diversity, Environmental Health of the System

The Refuge Administration Act states that each refuge will be managed to fulfill refuge purpose(s) as well as to help fulfill the System mission, and we will accomplish these purpose(s) and our mission by ensuring that the biological integrity, diversity, and environmental health of each refuge is maintained, and where appropriate, restored. We base our decisions on sound professional judgment.

C. Biological Integrity, Diversity, and Environmental Health in a Landscape Context

Biological integrity, diversity, and environmental health can be described at various landscape scales from refuge to ecosystem, national, and international. Each landscape scale has a measure of biological integrity, diversity, and environmental health dependent on how the existing habitats, ecosystem processes, and wildlife populations have been altered in comparison to historic conditions. Levels of biological integrity, diversity, and environmental health vary among refuges, and often within refuges over time. Individual refuges contribute to biological integrity, diversity, and environmental health at larger landscape scales, especially when they support populations and habitats that have been lost at an ecosystem, national, or even international scale. In pursuit of refuge purposes, individual refuges may at times compromise elements of biological integrity, diversity, and environmental health at the refuge scale in support of those components at larger landscape scales. When evaluating the appropriate management direction for refuges, refuge managers will consider their refuges' contribution to biological integrity, diversity, and environmental health at multiple landscape scales.

D. Maintenance and Restoration of Biological Integrity, Diversity, Environmental Health

We will, first and foremost, maintain existing levels of biological integrity, diversity, and environmental health at the refuge scale. Secondarily, we will restore lost or severely degraded elements of integrity, diversity, environmental health at the refuge scale and other appropriate landscape scales where it is feasible and supports achievement of refuge purpose(s) and System mission.

E. Wildlife and Habitat Management

Management, ranging from preservation to active manipulation of habitats and populations, is necessary to maintain biological integrity, diversity, and environmental health. We favor management that restores or mimics natural ecosystem processes or function to achieve refuge purpose(s). Some refuges may differ from the frequency and timing of natural processes in order

to meet refuge purpose(s) or address biological integrity, diversity, and environmental health at larger landscape scales.

F. Sound Professional Judgment

Refuge managers will use sound professional judgment when implementing this policy primarily during the comprehensive conservation planning process to determine: The relationship between refuge purpose(s) and biological integrity, diversity, and environmental health; what conditions constitute biological integrity, diversity, and environmental health; how to maintain existing levels of all three; and, how and when to appropriately restore lost elements of all three. These determinations are inherently complex. Sound professional judgment incorporates field experience, knowledge of refuge resources, refuge role within an ecosystem, applicable laws, and best available science including consultation with others both inside and outside the Service.

G. Public Use

The priority wildlife-dependent public uses, established by the National Wildlife Refuge System Improvement Act of 1997, are not in conflict with this policy when determined to be compatible. The directives of this policy do not generally entail exclusion of visitors or elimination of public use structures, *e.g.,* boardwalks and observation towers. However, maintenance and/or restoration of biological integrity, diversity, and environmental health may require spatial or temporal zoning of public use programs and associated infrastructures. General success in maintaining or restoring biological integrity, diversity, and environmental health will produce higher quality opportunities for wildlife-dependent public use.

3.8 What Are Our Responsibilities?

A. Director

(1) Provides national policy, goals and objectives for maintaining and restoring the biological integrity, diversity, and environmental health of the System.

(2) Ensures that national plans and partnerships support maintaining and restoring the biological integrity, diversity, and environmental health of the System.

(3) Ensures that the national land acquisition strategy for the System is designed to enhance the biological integrity, diversity, and environmental health of the System at all landscape scales.

B. Regional Director

(1) Provides regional policy, goals and objectives for maintaining and restoring the biological integrity, diversity, and environmental health of the System, including guidance to resolve any conflicts with biological integrity, diversity, and environmental health at an individual refuge versus at the larger landscape scales.

(2) Ensures that regional and ecosystem plans, and regional partnerships support maintaining and restoring the biological integrity, diversity, and environmental health of the System.

(3) Resolves conflicts that arise between maintaining biological integrity, diversity, and environmental health at the refuge level landscape scale versus at larger landscape scales.

C. Regional Chief

(1) Ensures that individual refuge comprehensive conservation plans support maintaining and restoring the biological integrity, diversity, and environmental health of the System.

(2) Reviews and ensures those refuge management programs that occur on many refuges (*e.g.,* fire management) are consistent with this policy.

D. Refuge Manager

(1) Follows the procedure outlined in Section 3.9 of this chapter.

(2) Incorporate the principles of this policy into all refuge management plans and actions.

3.9 How Do We Implement This Policy?

The Director, Regional Directors, Regional Chiefs, and Refuge Managers will carry out their responsibilities specified in Section 3.8 of this chapter. In addition, refuge managers will carry out the following tasks.

A. Identify the refuge purpose(s), legislative responsibilities, refuge role within the ecosystem and System mission.

B. Assess the current status of biological integrity, diversity, and environmental health through baseline vegetation, population surveys and studies, and any other necessary environmental studies.

C. Assess historic conditions and compare them to current conditions. This will provide a benchmark of comparison for the relative intactness of ecosystems' functions and processes. This assessment should include the opportunities and limitations to maintaining and restoring biological integrity, diversity, and environmental health.

D. Consider the refuge's importance to refuge, ecosystem, national, and international landscape scales of biological integrity, diversity, and environmental health. Also, identify the refuge's roles and responsibilities within the Regional and System administrative levels.

E. Consider the relationships among refuge purpose(s) and biological integrity, diversity and environmental health, and resolve conflicts among them.

G. Through the comprehensive conservation planning process, interim management planning, or compatibility reviews, determine the appropriate management direction to maintain and, where appropriate, restore, biological integrity, diversity, and environmental health, while achieving refuge purpose(s).

H. Evaluate the effectiveness of our management by comparing results to desired outcomes. If the results of our management strategies are unsatisfactory, assess the causes of failure and adapt our strategies accordingly.

3.10 What Factors Do We Consider When Maintaining and Restoring Biological Integrity, Diversity, and Environmental Health?

We plan for the maintenance and restoration of biological integrity, diversity, and environmental health while considering all three in an integrated and holistic manner. The highest measure of biological integrity, diversity, and environmental health is viewed as those intact and self-sustaining habitats and wildlife populations that existed during historic conditions.

A. Biological Integrity

(1) We evaluate biological integrity by examining the extent to which biological composition, structure, and function has been altered from historic conditions. Biological composition refers to biological components such as genes, populations, species, and communities. Biological structure refers to the organization of biological components, such as gene frequencies, social structures of populations, food webs of species, and niche partitioning within communities. Biological function refers to the processes undergone by biological components, such as genetic recombination, population migration, the evolution of species, and community succession [see 602 FW 3.4 C (1)(e), Planning Area and Data Needs].

(2) Biological integrity lies along a continuum from a biological system extensively altered by significant human

impacts to the landscape to a completely natural system. No landscape retains absolute biological integrity, diversity, and environmental health. However, we strive to prevent the further loss of natural biological features and processes, i.e., biological integrity.

(3) Maintaining or restoring biological integrity is not the same as maximizing biological diversity. Maintaining biological integrity may entail managing for a single species or community at some refuges and combinations of species or communities at other refuges. For example, a refuge may contain critical habitats for an endangered species. Maintaining that habitat (and, therefore, that species), even though it may reduce biological diversity at the refuge scale, helps maintain biological integrity and diversity at the ecosystem or national landscape scale.

(4) In deciding which management activities to conduct to accomplish refuge purpose(s) while maintaining biological integrity, we start by considering how the ecosystem functioned under historic conditions. For example, we consider the natural frequency and timing of processes such as flooding, fires, and grazing. Where it is not appropriate to restore ecosystem function, our refuge management will mimic these natural processes including natural frequencies and timing to the extent this can be accomplished.

(5) We may find it necessary to modify the frequency and timing of natural processes at the refuge scale to fulfill refuge purpose(s) or to contribute to biological integrity at larger landscape scales. For example, under historic conditions, an area may have flooded only a few times per decade. Migratory birds dependent upon wetlands may have used the area in some years, and used other areas that flooded in other years. However, many wetlands have been converted to agriculture or other land uses, the remaining wetlands must produce more habitat, more consistently, to support wetland-dependent migratory birds. Therefore, to conserve these migratory bird populations at larger landscape scales, we may flood areas more frequently and for longer periods of time than they were flooded historically.

B. Biological Diversity

(1) We evaluate biological diversity at various taxonomic levels, including class, order, family, genus, species, subspecies, and—for purposes of Endangered Species Act implementation—distinct population segment. These evaluations of biological diversity begin with population surveys and studies of flora and fauna. The System's focus is on native species and natural communities such as those found under historic conditions [see 602 FW 3.4 C (1)(e)]. The Natural Heritage Network databases for respective States should prove a valuable tool for this initial evaluation.

(2) We also evaluate biological diversity at various landscape scales, including refuge, ecosystem, national, and international. On refuges, we typically focus our evaluations of biological diversity at the refuge scale; however, these refuge evaluations can contribute to assessments at larger landscape scales.

(3) We strive to maintain populations of breeding individuals that are genetically viable and functional. We provide for the breeding, migrating, and wintering needs of migratory species. We also strive to maximize the size of habitat blocks and maintain connectivity between blocks of habitats, unless such connectivity causes adverse effects on wildlife or habitat (*e.g.,* by facilitating the spread of invasive species).

(4) At the community level, the most reliable indicator of biological diversity is plant community composition. We use the National Vegetation Classification System to identify biological diversity at this level.

C. Environmental Health

(1) We evaluate environmental health by examining the extent to which environmental composition, structure, and function have been altered from historic conditions. Environmental composition refers to abiotic components such as air, water, and soils, all of which are generally interwoven with biotic components (*e.g.,* decomposers live in soils). Environmental structure refers to the organization of abiotic components, such as atmospheric layering, aquifer structure, and topography. Environmental function refers to the processes undergone by abiotic components, such as wind, tidal regimes, evaporation, and erosion. A diversity of abiotic composition, structure, and function tends to support a diversity of biological composition, structure, and function [see 602 FW 3.4 C (1)(e), Planning Area and Data Needs].

(2) We are especially concerned with environmental features as they affect all living organisms. For example, at the genetic level, we manage for environmental health by preventing chemical contamination of air, water, and soils that may interfere with reproductive physiology or stimulate high rates of mutation. Such contamination includes carcinogens and other toxic substances that are released within or outside of refuges.

(3) At the population and community levels, we consider the habitat components of food, water, cover, and space. Food and water may become contaminated with chemicals that are not naturally present. Activities such as logging and mining or structures such as buildings and fences may modify security or thermal cover. Unnatural noise and light pollution may also compromise migration and reproduction patterns. Unnatural physical structures, including buildings, communication towers, reservoirs, and other infrastructure, may displace space or may be obstacles to wildlife migration. Refuge facility construction and maintenance projects necessary to accomplish refuge purpose(s) should be designed to minimize their impacts on the environmental health of the refuge.

3.11 How Do We Apply Our Management Strategies To Maintain and Restore Biological Integrity, Diversity, and Environmental Health?

A. We strive to manage in a holistic manner the combination of biological integrity, diversity, and environmental health. We balance all three by considering refuge purpose(s), System mission, and landscape scales. Considered independently, management strategies to maintain and restore biological integrity, diversity, and environmental health may conflict.

B. For example, physical structures and chemical applications are often necessary to maintain biological integrity and to fulfill refuge purpose(s). We may use dikes and water control structures to maintain and restore natural hydrological cycles, or use rotenone to eliminate invasive carp from a pond. These unnatural physical alterations and chemical applications would compromise environmental health if considered in isolation, but they may be appropriate management actions for maintaining biological integrity and accomplishing refuge purpose(s).

C. We may remove physical structures to promote endangered species recovery in some areas, or we may remove plants or animals to protect structures, depending upon refuge purpose(s). Unless we determine that a species was present in the area of a refuge under historic conditions, we will not introduce or maintain the presence of that species for the purpose of biological diversity. We may make exceptions where areas are essential for the conservation of a threatened or endangered species and suitable

habitats are not available elsewhere. In such cases, we strive to minimize unnatural effects and to restore or maintain natural processes and ecosystem components to the extent practicable without jeopardizing refuge purpose(s).

3.12 How Do We Incorporate Information From Historic Conditions Into Our Management Decisions?

A. Maintaining biological integrity, diversity, and environmental health require an ecological frame of reference. A frame of reference allows us to contrast current conditions of our resources with historic conditions. The reference guides us in two ways. It provides information on how the landscape looked prior to changes in land use that destroyed and fragmented habitats and resulted in diminished wildlife populations and the extirpation or extinction of species. It also allows us to examine how natural ecosystems function and maintain themselves. We use these conditions as a frame of reference in which to develop goals and objectives.

B. We use historical conditions as the frame of reference to identify composition, structure, and functional processes that naturally shaped ecosystems. We especially seek to identify keystone species, indicator species, and types of communities that occurred during the frame of reference. We also seek to ascertain basic information on natural ecosystem structure such as predator/prey relationships and distribution of plant communities. Finally, we seek to identify the scale and frequency of processes that accompanied these components and structures, such as fire regimes, flooding events, and plant community succession. Where appropriate and feasible, we also pursue biological integrity, diversity, and environmental health by eliminating unnatural biotic and abiotic features and processes not necessary to accomplish refuge purpose(s).

C. We do not expect, however, to reconstruct a complete inventory of components, structures, and functions for any successional stage occurring during the frame of reference. Rather, we use sound professional judgment to fit the pieces to create a conceptual picture of our resources under historic conditions.

D. We ensure that our management activities result in the establishment of a community that fits within what we reasonably believe to have been the natural successional series, unless doing so conflicts with accomplishing refuge purpose(s). We may choose to maintain nonclimax communities pursuant to refuge purpose(s) or for maintaining biological integrity, diversity, and environmental health at the regional, national, or international landscape scale. We favor techniques such as fire or flooding that mimic or result in natural processes to maintain these nonclimax communities. However, where it will support fulfillment of refuge purpose(s), we allow or, if necessary, encourage natural succession to proceed.

3.13 Where Do We Get Information on Historic Conditions?

A. Information on historic conditions may be historical, archeological, or other. Historical information includes the written and, in some cases, the pictographic accounts of Native Americans, explorers, surveyors, traders, and early settlers. Archeological information comes from collections of cultural artifacts maintained by scientific institutions. We may obtain other data from a range of sources, including research, soil sediments, and tree rings.

B. We obtain information on historic conditions from our investigations and from partners in academia, conservation organizations, and other Federal, State, Tribal, and local government agencies. In many cases, we use historical vegetation maps to provide data. Such historical maps are usually drawn at relatively coarse scales, perhaps to the level of vegetation alliance. Generally a comprehensive historical list of plant and animal species is not available or necessary. We will base the determination of natural species and ecosystem composition on sound professional judgment. We periodically update our information on historic conditions with results from ongoing historical, archeological, and other studies.

3.14 How Do We Manage Populations To Maintain and Restore Biological Integrity, Diversity, and Environmental Health?

A. We encourage cooperation and coordination with State fish and wildlife management agencies in setting refuge population goals and objectives. To the extent practicable, our regulations pertaining to fishing or hunting of resident wildlife within the System are consistent with State fish and wildlife laws, regulations, and management plans.

B. We maintain, or contribute to the maintenance of, populations of native species. We design our wildlife population management strategies to support accomplishing refuge purpose(s) while maintaining or restoring biological integrity, diversity, and environmental health. We formulate refuge goals and objectives for population management by considering natural densities, social structures, and population dynamics at the refuge level, and population objectives set by national plans and programs—such as the North American Waterfowl Management Plan—in which the System is a partner.

C. Natural densities are relatively stable for some species and variable for others. We manage populations for natural densities and levels of variation, while assuring that densities of endangered or otherwise rare species are sufficient for maintaining viable populations. We consider population parameters such as sex ratios and age class distributions when managing populations to maintain and restore where appropriate biological integrity, diversity, and environmental health.

D. On some refuges, including many of those having the purpose of migratory bird conservation, we establish goals and objectives to maintain densities higher than those that would naturally occur at the refuge level because of the loss of surrounding habitats. We more closely approximate natural levels at larger landscape scales, such as flyways, by maintaining higher densities at the refuge level.

E. We do not, however, allow densities to reach excessive levels that result in adverse effects on wildlife and habitat. The effects of producing densities that are too high may include disease, excessive nutrient accumulation, and the competitive exclusion of other species. We use planning and sound professional judgment to determine prudent limits to densities.

F. Where practical, we support the reintroduction of extirpated native species. We consider such reintroduction in the context of surrounding landscapes. We do not introduce species on refuges outside their historic range or introduce species if we determine that they were naturally extirpated, unless such introduction is essential for the survival of a species and prescribed in an endangered species recovery plan, or is essential for the control of an invasive species and prescribed in an integrated pest management plan.

3.15 How Do We Manage Habitats To Maintain and Restore Biological Integrity, Diversity, Environmental Health?

A. We will, first and foremost, maintain existing levels of biological

integrity, diversity, and environmental health at the refuge scale. Following that, we will restore lost or degraded elements of biological integrity, diversity, and environmental health at all landscape scales where it is feasible and supports fulfillment of refuge purposes.

B. Our habitat management plans call for the appropriate management strategies that mimic historic conditions while still accomplishing refuge objectives. For example, prescribed burning can simulate natural fire regimes or water level management can mimic natural hydrological cycles. Farming, haying, logging, livestock grazing, and other extractive activities are permissible habitat management practices only when prescribed in plans to meet wildlife or habitat management objectives, and only when more natural methods, such as fire or grazing by native herbivores, cannot meet refuge goals and objectives.

C. We do not allow refuge uses or management practices that result in the maintenance of non-native plant communities unless we determine there is no feasible alternative for accomplishing refuge purpose(s). For example, where we do not require farming to accomplish refuge purpose(s), we cease farming and strive to restore natural habitats. Where feasible and consistent with refuge purpose(s), we restore degraded or modified habitats in the pursuit of biological integrity, diversity, and environmental health. We use native seed sources in ecological restoration. We do not use genetically modified organisms in refuge management unless we determine their use is essential to accomplishing refuge purpose(s) and the Director approves the use.

3.16 How Do We Manage Non-Native Species To Maintain and Restore Biological Integrity, Diversity, and Environmental Health?

A. We prevent the introduction of invasive species, detect and control populations of invasive species, and provide for restoration of native species and habitat conditions in invaded ecosystems. We develop integrated pest management strategies that incorporate the most effective combination of mechanical, chemical, biological, and cultural controls while considering the effects on environmental health.

B. We require no action to reduce or eradicate self-sustaining populations of non-native, noninvasive species (*e.g.,* pheasants) unless those species interfere with accomplishing refuge purpose(s). We do not, however, manage habitats to increase populations of these species unless such habitat management supports accomplishing refuge purpose(s).

3.17 How Does This Policy Affect the Acquisition of Lands for the System?

A. We consider the mission, goals, and objectives of the System in planning for its strategic growth. We will take a proactive approach to identifying lands that are critical for maintaining or restoring the biological integrity, diversity, and environmental health of the System at all landscape scales. We will integrate this approach into all Service strategies and initiatives related to the strategic growth of the System. We incorporate the directives of this policy when evaluating an area's potential contribution to the conservation of the ecosystems of the United States.

B. We use the Land Acquisition Priority System to rank potential acquisitions once the Director approves significant expansions or new refuges. Our Land Acquisition Priority System includes components that gauge the contributions of refuges to maintaining and restoring biological integrity, diversity, and environmental health.

3.18 What Is the Relationship Between Biological Integrity, Diversity, and Environmental Health and Compatibility?

When completing compatibility determinations, refuge managers use sound professional judgment to determine if a refuge use will materially interfere with or detract from the fulfillment of the System mission or the refuge purpose(s). Inherent in fulfilling the System mission is protection of the biological integrity, diversity, and environmental health of the System. Specific policy for compatibility is found in 603 FW 2.

3.19 What Is the Relationship Between Biological Integrity, Diversity, and Environmental Health and Comprehensive Conservation Planning?

A. We integrate the principles of this policy into all aspects of comprehensive conservation planning, including pre-planning guidance [see 602 FW 3.4 C (1)(e)] as we complete plans to direct long-range refuge management and identify desired future conditions for proposed refuges (see 602 FW 1.7 D).

B. Refuge purpose(s) and the System mission serve as the basis for goals and objectives at all levels of the System (*e.g.,* System, Regional, ecosystem, and refuge level). When we develop refuge goals and objectives during the Comprehensive Conservation Plan process we include goals and objectives for maintaining and restoring the biological integrity, diversity, and environmental health of the refuge.

C. While developing Comprehensive Conservation Plans, we make management decisions based on sound professional judgment. We subsequently evaluate the effectiveness of these decisions by comparing results to desired outcomes. If the results are unsatisfactory, we assess the causes of failure and adapt our management decisions accordingly. In part, we base management decisions on natural resource-related research that has been conducted on refuges. This type of research adds to the general body of information related to natural resource management and aids us in continually adapting our management decisions. We generally encourage natural resource-related research on refuges.

3.20 How Do We Protect Biological Integrity, Diversity, and Environmental Health From Actions Outside of Refuges?

Events occurring off refuge lands or waters may injure or destroy the biological integrity, diversity, and environmental health of a refuge. Given their responsibility to the public resources with which they have been entrusted, refuge managers should address these problems. It is critical that they pursue resolution fully cognizant and respectful of legitimate private property rights, seeking a balance between such rights and the refuge manager's own responsibility to the public trust. While each situation will be different, the following is a suggested procedure which emphasizes our desire for cooperative resolutions. The time and effort expended, and the rate at which a refuge manager escalates the process, will depend on the severity of threat and the resources at risk.

A. We first seek resolution by directly contacting the landowner(s), corporation, agency or other entity from which the problem originates.

B. Where direct discussions fail, managers might seek resolution through collaborative discussions with State or local authorities or other organizations that can help in cooperative resolution of the problem.

C. An appropriate next step might be to pursue resolution at the local level through planning and zoning boards or other regulatory agencies at the city and county level. Failing that, the manager may seek avenues through State administrative and regulatory agencies. Regulatory solutions are a serious step, and a manager should take this route only after careful consideration and in

close consultation with the Regional Offices.

D. If the above efforts fail, we may take action within the legal authorities available to the Service and with full respect to private property rights. In such cases, refuge managers will consult with the Office of the Solicitor for assistance in identifying appropriate remedies and obtain concurrence from the Regional Director.

Dated: January 8, 2001.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–950 Filed 1–12–01; 8:45 am]

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Federal Register

Tuesday,
January 16, 2001

Part VIII

Office of Management and Budget

North American Industry Classification System—Revision for 2002; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Revision for 2002

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of final decision.

SUMMARY: Under Title 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) is announcing its final decision to adopt the North American Industry Classification System (NAICS) revisions for 2002 as recommended by the Economic Classification Policy Committee in OMB's notice for solicitation of comments in Part II of the April 20, 2000, **Federal Register** (65 FR 21241). In addition, OMB is adopting one change not included in the April 20, 2000, notice—the move of Map and Atlas Publishing from Industry 511199, All Other Publishing, to Industry 511130, Book Publishing.

In the April 20, 2000, notice, OMB's Economic Classification Policy Committee (ECPC) recommended a revision of the industry classification system to extend the three-country agreement level for the Construction sector and to recognize important changes in the Information sector. In addition, as an interim measure in the United States, the ECPC recommended restructuring the Wholesale Trade sector to reflect differences in production functions and to capture more accurately the rapidly-growing business-to-business electronic markets developing in the United States. For the Retail Trade sector, the United States is creating additional national level detail for department stores and nonstore retailers to create more meaningful, homogeneous industries for the United States. More details of this decision are presented in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: Federal statistical data published for reference years beginning on or after January 1, 2002, should be published using the 2002 NAICS United States codes. Agencies may adopt the 2002 NAICS earlier at their discretion. Publication of a 2002 NAICS United States Manual is planned for January 2002.

ADDRESSES: You should send correspondence about the adoption and implementation of 2002 NAICS as shown in the April 20, 2000, **Federal Register** notice, and modified by Attachments 1, 2, and 3 of this notice, to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone number: (202) 395–3093, FAX number: (202) 395–7245.

You should address inquiries about the content of industries or requests for electronic copies of the 2002 NAICS tables to: John Murphy, Assistant Division Chief for Classification Activities, Service Sector Statistics Division, Bureau of the Census, Room 2641–3, Washington, DC 20233, telephone number: (301) 457–2672, FAX number: (301) 457–1343.

Electronic Availability and Comments:

This document and the April 20, 2000, **Federal Register** are available on the Internet from the Census Bureau via WWW browser and E-mail. To obtain this document via WWW browser, connect to http://www.census.gov/naics. This WWW page also contains previous NAICS **Federal Register** notices and related documents.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building, Washington, DC 20503, E-mail address: pbugg@omb.eop.gov, telephone number: (202) 395–3095, FAX number: (202) 395–7245.

SUPPLEMENTARY INFORMATION: The April 20, 2000, **Federal Register** notice (1) summarized the background for the proposed revisions to NAICS 1997 in Part I; (2) contained a summary of public comments in Part II; (3) detailed the structure changes agreed upon by the three countries in Part III; and (4) provided a comprehensive listing of changes for national industries and their links to NAICS 1997 industries in Part IV.

Subsequent to the release of the April 20 **Federal Register**, representatives from the statistical agencies of Mexico, Canada, and the United States who were working on a parallel three-country product classification system proposed to the three-country Steering Committee that Atlas and Map Publishers, currently in NAICS Industry 51119 Other Publishers, be moved to Industry 51113 Book Publishers. This proposal stemmed from the fact that the process of publishing atlases is similar to the publishing process for books such as reference books, and that the same industries often produce both atlases and maps. Informal discussions with these industries confirmed their support of this change. OMB's final decision regarding revision of NAICS for 2002 is to adopt the proposal contained in the April 20, 2000, **Federal Register**, with the one change to move Atlas and Map Publishers into Industry 51113. Attachments 1, 2, and 3 show the corrected lines for Tables 1, 2, and 3, as contained in the April 20 **Federal Register**.

After taking into consideration other comments submitted in direct response to the April 20, 2000, **Federal Register** notice, as well as benefits and costs, and after consultation with the Economic Classification Policy Committee (ECPC), Mexico's Instituto Nacional de Estadıstica, Geografiia e Informatica (INEGI) and Statistics Canada, OMB made no other changes to the scope and substance of the April 20, 2000, **Federal Register** notice. The other comments that were received either supported proposed changes, or suggested changes that would be incompatible with the production-based foundation of NAICS or be incompatible with proposals that were accepted.

NAICS was jointly developed by Canada, Mexico, and the United States. For the 2002 revision the three countries focused on harmonizing and updating the Construction and Information sectors of NAICS. In the 1997 NAICS, the Construction sector was comparable among all three countries only at the highest levels of aggregation. Although new in 1997, the Information sector lacked finite categories related to important new and emerging industries, prompting the three countries to re-evaluate and restructure this sector. The United States will implement structural changes for the Wholesale Trade and Retail Trade sectors which will not impact the three country comparability for these sectors. It was not the intent of the ECPC to open for consideration all areas of NAICS that currently lack three-country comparability or to revise sectors other than those specifically listed above. Other sectors will be re-evaluated for future NAICS revisions.

Sally Katzen,

Deputy Director for Management.

Attachment 1—Revisions to Table 1 of the April 20, 2000, Federal Register Part II

TABLE 1.—2002 NAICS UNITED STATES MATCHED TO 1997 NAICS UNITED STATES

2002 NAICS code	2002 NAICS and U.S. description	Status code	1997 NAICS code	1997 NAICS description
51113	Book Publishers	R	*511199	All Other Publishers (atlas and map publishers, except Internet Publishing).
		R	*511130	Book Publishers (except Internet Publishing).

Attachment 2—Revisions to Table 2 of the April 20, 2000, Federal Register Part II

TABLE 2.—1997 NAICS MATCHED TO 2002 NAICS UNITED STATES

1997 NAICS code	1997 NAICS U.S. description	2002 NAICS code	2002 NAICS and U.S. description
511199	All Other Publishers:		
	Atlas and Map Publishers (except Internet Publishers)	511130	Book Publishers.
	Atlas and Map Publishers (Internet Publishers) and All Other Internet Publishers.	516110	Internet Publishers (pt.)
	All Other Publishers (except Internet Publishers)	511199	All Other Publishers.

Attachment 3—Revisions to Table 3 of the April 20, 2000, Federal Register Part II

TABLE 3.—2002 NAICS UNITED STATES MATCHED TO 1987 STANDARD INDUSTRIAL CLASSIFICATION

2002 NAICS code	2002 NAICS description	1987 SIC code	1987 SIC description
51113	Book Publishers:		
	Atlas and Map Publishers and Technical Book and Manual Publishers. (except Internet)	2741	Miscellaneous Publishing (atlases and books, technical books and manuals, except Internet publishing)
	Book Publishers (except Internet)	2731	Books: Publishing or Publishing and Printing (except music books and Internet book publishing).

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Federal Register

Tuesday,
January 16, 2001

Part IX

Office of Management and Budget

Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity; Notice

OFFICE OF MANAGEMENT AND BUDGET

Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice of availability and request for comments.

SUMMARY: OMB is announcing the availability of ''Provisional Guidance for the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity,'' and soliciting public comment on any aspects of the document for a period of 60 days. The document is close to 200 pages and thus is not being reproduced in the **Federal Register**. It is available electronically on the OMB web site at the following address: http://www.whitehouse.gov/OMB/inforeg/index.html#SP—go to Data on Race and Ethnicity, or in paper form from OMB at the address below. This updated material supercedes and replaces the draft provisional guidance that OMB made available on its web site in February 1999.

DATES: Written comments should be received by OMB by March 19, 2001.

ADDRESSES: Please send comments to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503; fax: (202) 395–7245.

Electronic Availability and Addresses: This **Federal Register** Notice is available electronically from the OMB web site: http://www.whitehouse.gov/OMB/fedreg/index.html. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: http://www.access.gpo.gov/su_docs/aces/aces140.html.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger at telephone 202–395–7315; or E-mail: sevinger@omb.eop.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** for October 30, 1997, OMB announced ''Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,'' which revised the standards originally adopted in 1977. (See 62 FR 58781—58790 for background on revisions that were adopted). This classification provides a minimum set of five categories for data on race (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White) and two categories for data on ethnicity (Hispanic or Latino and Not Hispanic or Latino). In addition to changes in the categories and terminology, the 1997 standards require that agencies provide the opportunity for individuals to choose more than one racial category if they wish to reflect multiple racial heritages.

Since this change in policy that permits reporting of more than race was announced, considerable attention has been given to the question of how data on multiple race responses would be tabulated. Federal agencies and other users of data on race and ethnicity requested guidance on how to implement several aspects of the 1997 standards.

OMB issued some preliminary tabulation guidance as part of the October 30, 1997 **Federal Register** Notice. In addition, for the past several years the Tabulation Working Group of the Interagency Committee for the Review of Standards for Data on Race and Ethnicity has been considering tabulation and other implementation issues and working to develop additional guidance. This group of statistical and policy experts drawn from the Federal agencies that generate or use data on race and ethnicity produced draft provisional guidance that OMB issued on its web site in February 1999. The provisional guidance being announced today is a substantially updated version of the earlier guidance. It reflects public comments on the earlier draft as well as the Tabulation Working Group's further research and deliberations on the issues.

The guidance presented in this document is intended for any Federal agencies or organizational units that maintain, collect, or present data on race and ethnicity for Federal statistical purposes, program administrative reporting, or civil rights compliance reporting. To foster comparability across data collections carried out by various agencies, it is useful for those agencies to report responses of more than one race using some standardized tabulations or formats.

The guidance briefly explains why the tabulation guidelines are needed, reviews the general guidance issued when the standards were adopted in October 1997, and provides information on the criteria used in developing the guidelines. The guidance also addresses a larger set of implementation questions that have emerged during the working group's deliberations. Thus, the guidance addresses: collecting data on race and ethnicity using the 1997 standards, including sample questions; tabulating Census 2000 data as well as data on race and ethnicity collected in surveys and from administrative records; using data on race and ethnicity in applications such as legislative redistricting, civil rights monitoring and enforcement, and population estimates; and comparing data under the 1997 and the 1977 standards when conducting trend analyses. The 1997 standards are reproduced in Appendix A to the guidance. Appendix B provides OMB Bulletin No. 00–02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.'' Appendix C provides the full report with tables (85 pages) on how data collected under the 1997 standards might be meaningfully compared to data collected under the 1977 standards. Including the appendices, the full document is close to 200 pages.

This guidance is necessarily provisional pending the availability of data from Census 2000 and other data systems as the 1997 standards are implemented. The guidance provides a general framework and is not intended to cover every specific issue that agencies will encounter during their implementation of the 1997 standards. In some instances, for example, specific implementation issues are being addressed through OMB's review of data collections under the Paperwork Reduction Act. This guidance is expected to be reviewed and refined as Federal agencies and others gain experience with data collected under the 1997 standards and as agencies address implementation issues in their respective programs.

Below is the table of contents for the ''Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.''

Table of Contents

OMB would appreciate receiving views and comments on any aspects of the provisional guidance for implementing the 1997 standards for Federal data on race and ethnicity.

Sally Katzen,

Deputy Director for Management.

[FR Doc. 01–1132 Filed 1–12–01; 8:45 am]

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Federal Register

Tuesday,
January 16, 2001

Part X

Department of Justice

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against Origin Discrimination Affecting Limited English Proficient Persons; Notice

DEPARTMENT OF JUSTICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: United States Department of Justice.

ACTION: Policy Guidance Document.

SUMMARY: The United States Department of Justice (DOJ) is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be submitted on or before March 19, 2001. DOJ will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, P.O. Box 66560, Washington, DC 20035–6560; Comments may also be submitted by facsimile at 202–307–0595.

FOR FURTHER INFORMATION CONTACT: Christine Stoneman or Sebastian Aloot at the Civil Rights Division, P.O. Box 66560, Washington, DC 20035–6560. Telephone 202–307–2222; TDD: 202–307–2678. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Justice (DOJ) (''recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOJ's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

The policy guidance includes appendices. Appendix A provides examples of how this guidance would apply to DOJ recipients. Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance. The text of the complete guidance document, including appendices, appears below.

Dated: January 5, 2001.

Daniel Marcus,

Associate Attorney General, United States Department of Justice.

Guidance to Recipients of U.S. Department of Justice Federal Financial Assistance: Providing Meaningful Access to Individuals Who Are Limited English Proficient in Compliance With Title VI and Implementing Regulations (''LEP Guidance for DOJ Recipients'')

I. Introduction

For most people living in the United States, English is their native language or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. If they also have limited ability to read, speak, or understand English, then these people are limited English proficient, or ''LEP.'' For them, language can be a barrier to accessing benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded programs and activities.

This guidance (''Guidance'') is based on Title VI of the Civil Rights Act of 1964 and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in federally assisted programs or activities. In certain circumstances, failing to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP persons is national origin discrimination. Therefore, recipients must take reasonable steps to ensure meaningful access for LEP persons.

In August, 2000, the President signed Executive Order 13166. Under that order, every federal agency that provides financial assistance to non-federal entities must create guidance on how their recipients can provide meaningful access to LEP persons and therefore comply with the longstanding Title VI law and its regulations. DOJ is issuing this Guidance to comply with the Executive Order. The guidance document is new, but Title VI's meaningful access requirement is not.

This Guidance should help recipients of Department of Justice (DOJ) financial assistance understand how to comply with the law. Recipients have a great deal of flexibility in determining how to comply with the meaningful access requirement, and are not required to use all of the suggested methods and options listed. As always, recipients also have the freedom to and are encouraged to go beyond mere compliance and create model programs for LEP access.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- Police and sheriffs' departments
- Departments of corrections
- Courts
- Certain nonprofit agencies with law enforcement missions.

When federal funds are passed through from one recipient to a subrecipient, the subrecipient is also covered by Title VI.

The LEP persons that are eligible to be served or encountered by these recipients include, but are not limited to:

- LEP persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- LEP persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, and community members.
- LEP persons who are not in custody but are under conditions of parole or probation.
- LEP persons who encounter the court system.
- Parents and family members of the above.

Title VI applies to the entire program or activity of a recipient of DOJ assistance. That means that Title VI covers all parts of a recipient's operations. This is true even if only one part of the agency uses the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered by Title VI.

Technical Assistance

DOJ plans to continue to provide assistance and guidance in this important area. For example, DOJ plans to work with representatives of law enforcement, corrections, courts, and LEP persons to identify model plans and examples of best practices and share those with recipients.

DOJ Programs and Activities

At the same time as federal agencies are creating recipient guidance, Executive Order 13166 requires that they create LEP plans for their own agencies that are consistent with the standards for recipients. Therefore, DOJ will apply the standards in this guidance to its own activities.[1]

Appendices

There are two appendices to this guidance. Appendix A provides examples of how this guidance would apply to DOJ recipients.

Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance.

Both of these appendices should be considered part of this guidance.

State or Local ''English-Only'' Laws

State or local ''English-only'' laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with ''English-only'' laws do not have to accept federal funding. However, if they do, they still have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

II. How Recipients Should Decide What Language Services They Should Provide

As mentioned in Executive Order 13166 and the DOJ Guidance issued in August, 2000, recipients should apply a four-factor test to decide what steps to take to provide meaningful access to their programs and activities for LEP persons. Once the recipient has chosen the services it will provide, the recipient should prepare a written policy on language assistance for LEP persons (an ''LEP policy'').

A. The Four-Factor Analysis

Recipients must take reasonable steps to ensure meaningful access to their services, programs, and activities. What ''reasonable steps to ensure meaningful access'' means depends on a number of factors. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for LEP persons. The results of this balancing test allow a recipient to decide what documents to translate, when oral translation is necessary, and whether language services must be made immediately available.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are needed for its different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus require more in the way of language assistance.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons eligible to be served or encountered by the recipient in carrying out its operations. Recipients should look to available data, such as the latest census data for the area served, data from school systems and from community organizations, and data collected by the recipient.[2] *The greater the number or proportion of LEP persons, the more likely language services are needed.*

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as they can, the frequency with which they have or should have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one LEP person a year may be very different than those expected from a recipient that serves several LEP persons each day. But even those that serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ from those to provide bicycle safety courses or recreational programming. A recipient needs to determine if a denial or delay of access to services or information could have serious implications for the LEP individual. In addition, a decision by a federal, state, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of *Miranda* rights, serves as strong evidence of the program's importance.

(4) The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations. Large entities should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.

Applying the four factors, for example, a small police department with limited resources encountering very few LEP people has far fewer language assistance responsibilities than larger departments with more resources and large populations of LEP individuals.[3]

[1] DOJ has created, pursuant to the Executive Order, a separate plan for providing meaningful access to LEP persons in DOJ conducted activities.

[2] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that census data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who do not speak or understand English very well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, it is important to focus in on the languages spoken by those who are not proficient in English.

[3] As another example, under the four-part analysis, Title VI does not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all official state statutes or notices of rulemaking. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of official documents. These criteria, however, may result in translation obligations where, for instance, laws are otherwise posted or summarized in waiting rooms, summarized or set forth in forms, applications, or

Continued

B. Selecting Language Assistance Services

After applying the four-factor analysis, recipients have two main ways to provide language services, where needed: Oral interpretation and written translation. In deciding how to provide these services, recipients should consider the following information.

(1) Oral Language Services

Where oral interpretation is needed, recipients should develop procedures for providing competent interpreters in a timely manner. To do so, the recipient should consider some or all of the following options:

HIRING BILINGUAL STAFF For public contact positions. When particular languages are encountered often, hiring bilingual staff offers one of the best options. Recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally translate documents, they must be competent in the skill of interpreting. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

HIRING STAFF INTERPRETERS. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

CONTRACTING FOR INTERPRETERS. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill.

USING COMMUNITY VOLUNTEERS. Recipient-coordinated use of community volunteers may provide a cost-effective way to provide language services. It is often best to use community volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, must be competent in the skill of interpreting. It is best to make formal arrangements with volunteers. That way, the service is available more regularly and volunteers understand applicable confidentiality and impartiality rules.

USING TELEPHONE INTERPRETER LINES. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Although they are useful in many situations, it is important to ensure that such services have interpreters who are able to interpret any legal terms or terms that are specific to a particular program when such terms may come up in the conversation. Also, sometimes it may be necessary to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

COMPETENCE OF INTERPRETERS. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the above options they use. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.

Competency to interpret does not always mean formal certification as an interpreter. However, certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in both English and in the other language;
- Are bound to confidentiality and impartiality to the same extent the recipient employee they are interpreting for is so bound and/or to the extent their position requires;
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity; and
- Demonstrate the ability to convey information in both languages, accurately;

Some recipients, such as courts, may have additional self-imposed requirements for interpreters.

Inappropriate Use of Family Members, Friends, Other Inmates, or Detainees. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.[4] If the LEP person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. In emergency situations that are not reasonably foreseeable, use of interpreters not provided by the recipient may be necessary. Proper recipient planning and implementation can help avoid such situations.

(2) Translation of Written Materials

An effective LEP policy ensures that vital written materials are translated into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The term ''vital documents'' includes, for example:

- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- Notices of disciplinary action
- Notices advising LEP persons of free language assistance
- Prison rule books
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is ''vital'' also depends upon the importance of the program, information, encounter, or service involved. For instance, applications for bicycle safety courses would not generally be considered vital, whereas applications for drug and alcohol counseling in prison would generally be considered vital.

Many large documents have both vital and non-vital information in them. Written translation of only the vital information is usually sufficient.

It sometimes may be hard to tell the difference between vital and non-vital documents. This may be especially true for outreach materials like brochures or other information on rights and services.

vital outreach material, or special populations are provided with rules and regulations they must follow (*e.g.,* in prisons, *see* Appendix A).

[4] While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In order to have meaningful access, LEP persons need to be aware of those rights and services. Of course, it would be impossible to translate every piece of outreach material into every language. However, sometimes lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate.

Recent technological advances have made it easier for recipients to store and share translated documents. At the same time, DOJ recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be too burdensome to demand that recipients in these circumstances translate all written materials into all of those languages. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the most frequently encountered languages, and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents will be determined on a case-by-case basis, looking at the totality of the circumstances.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the DOJ recipient to meet the guidelines outlined in paragraphs (a) and (b) below.

Paragraphs (a) and (b) outline the circumstances that provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, this will be considered strong evidence of compliance, in the area of written translations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) will not necessarily mean non-compliance with Title VI. In such circumstances, DOJ reviews the totality of the circumstances to determine the recipient's obligation to provide written materials in languages other than English.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, DOJ will not find the translation of written materials necessary for compliance with Title VI. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, would be acceptable under such circumstances.

Safe Harbor. DOJ will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(a) The DOJ recipient provides written translations of, at a minimum, vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other vital documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed. For example, correctional facilities should ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

The term ''persons eligible to be served or likely to be affected or encountered'' as used in paragraph (a) relates to the issue of identifying the DOJ recipient's service area for purposes of meeting its Title VI obligation. Because of the wide variety of recipient programs and activities, there is no ''one size fits all'' definition of what constitutes ''persons eligible to be served or likely to be affected or encountered.'' Generally, the term means those persons who are in the geographic area that has been approved by a federal grant agency as the service area and who are either eligible for the recipient's services or otherwise might be affected or encountered by the recipient.

Where no service area has been approved, DOJ will consider the relevant service area as that approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples of determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients need to consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Just as with oral interpreters, translators of written documents must be competent. It is a good idea to build in a ''check'' on the translation. For instance, an independent translator could check the first translation. Or, one translator could translate the document, and a second, independent translator could translate it back into English. This is called ''back translation.''

Translators should understand the expected reading level of the audience. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version. Community organizations may be able to help consider whether a document is written at a good level for the audience.

Finally, recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art, legal, or other technical concepts. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

C. Elements of Effective Written Policy on Language Assistance for LEP Persons (''LEP Policy'')

After completing the four-factor analysis and deciding what language assistance services are needed, the recipient should include those in a written LEP policy. The key to providing meaningful access is accurate and effective communication between the DOJ recipient and the LEP individual.

Although DOJ recipients have a great deal of flexibility in designing their policies, effective programs usually have five elements, discussed below. Failure to take all of the steps outlined in this section does not necessarily mean that a recipient has violated the law. Just as with all Title VI complaints, DOJ assesses each complaint on a case-by-case basis. DOJ applies the four factors in deciding whether the steps

taken by a recipient provide meaningful access.

(1) Identifying LEP Individuals Who Need Language Assistance.

As noted above, the first two parts of the four-factor analysis of need include an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. In addition, when developing a plan, recipients should develop a process for employees to identify the language of LEP persons encountered so that language services can be provided.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. When records are normally kept of past interactions with members of the public, the language of the LEP person should be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future application of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

The LEP policy should include information about the ways in which language assistance will be provided. For instance, it should include information on at least the following:

- Types of language services available (see Section IIB, above).
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff need to know that they must provide meaningful access to information and services for LEP persons. Recipients should provide training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

It is important that this training be part of the orientation for new employees and that all employees in public contact positions (or having contact with those in a recipient's custody) be properly trained. Recipients have flexibility in deciding the way the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP policy.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, the signs could state that LEP persons have a right to free language assistance. The signs should be translated into the most common languages encountered. They should explain how to get the language help.
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the right to language services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio stations about the available language assistance services and how to get them.

(5) Monitoring and Updating the LEP Policy

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they should make any needed changes. They should then provide notice of any changes in services to the LEP public and to employees. In addition, DOJ recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community.

In their reviews, recipients should assess changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP policy and how to implement it.
- Whether identified sources for assistance are still available and viable.

III. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the Title VI meaningful access requirement applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when deciding the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention
- Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

Title VI Compliance Procedures

DOJ recipients have a great deal of flexibility in deciding how to comply with these obligations. DOJ will continue to use the same process for handling complaints based on LEP as it uses in any other Title VI complaint. That process emphasizes voluntary compliance. (*See* Appendix B for further information). In addition, DOJ will use this Guidance, including the appendices, in conducting investigations or reviews of a recipient's language services.

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive.

The requirements of Title VI and its implementing regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. For instance, while application of the four-factor analysis may lead to a similar result, it does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than Title VI.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in entry into the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. LEP individuals' encounters with police and sheriffs' departments are covered by Title VI if those departments receive federal financial assistance. This Guidance focuses on the requirements under Title VI to communicate effectively with persons who are LEP to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments have available printed *Miranda* rights in languages other than English.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for assessing need and implementing a plan in compliance with Title VI and its implementing regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed. The more predictable the need for language services, the greater the responsibility under the four-factor analysis.

Before giving specific examples, several general points should assist law enforcement planners in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations

In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of agricultural workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials should not limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on census data and an information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department should consider, under the safe harbor provisions of this Guidance, translating vital written documents into Spanish. In addition, the predictability of contact during those seasons makes it important for the jurisdiction to review its oral language services to ensure meaningful access for LEP individuals.

[1] DOJ's own Federal Bureal of Investigation makes written versions of those rights available in several different languages.

b. Target Audiences

For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.,* elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators, etc.). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served. The police department could then focus language services where they are most likely to be needed.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves ''Officer in the Classroom'' presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should expect the frequency of contact with Vietnamese LEP individuals in general to be quite high in those areas, and it should plan accordingly.

c. Importance of Service/Information

Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in such activities as well.

d. Interpreters

Just as with other recipients, law enforcement recipients have a variety of options for providing language services. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Proper recipient planning and implementation can help avoid such situations.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the Title VI analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the ''reasonableness'' standard, and frequency of contact and resources factors, the obligation to provide language services increases where the importance of the activity is greater, the law enforcement activity is more focused, and/or the provision of language services is more ''within the control'' of the police department.

Under this framework, then, critical areas for language assistance include: 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important; further, complaint forms and investigations/hearings are directly within the control of the department. Thus, forms, hearings, and other complaint procedures should be made accessible to LEP individuals. Often very important, but less focused and controlled are: Routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. In these situations, the LEP plan should provide for a great deal of flexibility while at the same time ensuring that, wherever reasonable, language resources are available to officers and the LEP persons they encounter and that, when not available, the consequences to the LEP individuals are minimized. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships

and community-based programming as a law enforcement technique, the need for language services should be considered in these activities as well. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance

LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

All emergency service lines, or ''911'' lines, operated by agencies that receive federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have to have a plan for serving callers who are LEP, but the LEP policy and implementation may involve a telephonic language line that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone language line when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. Such services are consistent with Title VI principles.

b. Enforcement Stops Short of Arrest and Field Investigations

Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, *Terry* stops, and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access, for example, in routine field investigations and traffic stops. Nevertheless, the ability of law enforcement personnel to discharge fully and effectively its enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identifying or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely and common situations.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. Consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or *Terry* stops, and similar activities designed to solicit and obtain information from the community. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide their officers with sufficient written or oral translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law enforcement officials could reasonably consider the adoption of a policy assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephone language line access where other options are not successful and safety and availability of phone access permit.

c. Custodial Interrogations

Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, recipients' ability to anticipate and plan for a need for language services, and the control over LEP and other individuals asserted by recipients in custodial interrogation situations, law enforcement recipients must ensure competent and free language services for LEP individuals in such situations. A clear written policy, understood and easily accessible by all officers, will assist the law enforcement agency in complying with this obligation. In formulating a written policy for effectively communicating with LEP individuals, agencies should consider whether law enforcement personnel themselves ought to serve as interpreters during custodial interrogation, or whether a qualified independent interpreter would be more appropriate.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a statement, and any communication by an LEP individual in response to a law enforcement officer. When considering whether an interpreter is qualified, the LEP policy discourages use of police officers as interpreters in interrogations except under circumstances in which the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in

[2] Some state laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. Such a plan is consistent with Title VI responsibilities.

d. Intake/Detention

State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is essential that law enforcement agencies have the ability to communicate effectively with an LEP arrestee. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, language lines may provide the most cost effective and efficient method of communication.

e. Community Outreach

Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor LEP analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. The department should take reasonable steps to make the counseling accessible to LEP individuals. In this case, the department successfully sought bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department has an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters must sign a confidentiality agreement with the department. This would be consistent with Title VI responsibilities.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This would be consistent with Title VI responsibilities.

B. Departments of Corrections

All departments of corrections that receive federal financial assistance from DOJ must provide LEP prisoners [3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in translating, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Language lines may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline present the most critical situations under the four-factor analysis.

a. Assessment

In order to create a plan for providing language services, each department of corrections that receives federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.*, translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation

Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to

[3] In this Guidance, the terms ''prisoners'' or ''inmates'' include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students with disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, will likely need to translate written rules, notices, and other important orientation material into Spanish, with oral instructions, whereas prisons with very few such inmates may choose to rely upon a language line or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a language line. Each person receives at least an oral explanation of the rights, rules, and opportunities. This orientation plan would be considered consistent with Title VI.

c. Disciplinary Action

When a prisoner who is LEP is the subject of disciplinary action, the prison must provide language assistance. That assistance must ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates cannot serve as interpreters in disciplinary hearings.

d. Health and Safety

Prisons providing health services should refer to Department of Health and Humans Services' guidance [4] regarding health care providers' Title VI obligations, as well as with this Guidance.

Health care services are obviously extremely important. LEP individuals must be provided with access to those services. How that access is provided depends upon the number or proportion of LEP individuals, the frequency of contact with those LEP individuals, and the resources available to the recipient. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to an non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence

If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate cannot be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) Make the program accessible to the LEP inmate; or (2) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners must be provided access to this prerequisite in some fashion. *How* that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison will still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate. Another possible option would be to waive the requirement for the LEP prisoners and allow early release without this prerequisite.

f. ESL Classes

States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance prohibits or requires such mandates. ESL courses often serve as an important part of a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are provided does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections

This guidance also applies to community corrections programs that receive, directly or indirectly, federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed. Important oral communications include, for example: interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department

[4] A copy of that guidance can be found on the HHS website at http://www.hhs.gov/ocr/lep/ and at http://www.usdoj.gov/crt/cor.

descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. Title VI and this Guidance apply to those entities. Examples involving some of those recipients follow:

1. Courts

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services. At a minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created certification procedures for interpreters. This is one way of meeting the Title VI requirement that recipients ensure competency of interpreters. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages.

Example: A state court receiving DOJ federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: Codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. This type of assessment of need, planning, and implementation is consistent with Title VI principles.

Many individuals, while able to communicate in English to some extent, are still LEP. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved.

Example: Judges in a county court receiving federal financial assistance have adopted a *voir dire* for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with ''yes'' or ''no.'' It includes questions about comfort level in English, and questions that require active responses, such as: ''How did you come to court today?'' etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. Such a procedure is consistent with Title VI principles.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this ''second check'' solution is one appropriate way of ensuring meaningful access to the LEP individual.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These are important steps in providing meaningful access to the court for LEP individuals.

Just as corrections recipients must take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts must ensure that LEP persons have access to programs that would give them the opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals requires more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have ''how to'' materials in English helping unrepresented individuals negotiate the family court processes. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly and thereby benefits from the work of the urban county. Because this type of outreach material can be vital for an unrepresented person seeking access to a vital service of the court, such a translation is consistent with Title VI obligations and falls within the safe harbor. Creative solutions, such as sharing resources across jurisdictions, can help overcome serious financial concerns in areas with few resources.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion

of LEP individuals in the contact population, and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county, which connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a language line service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to whom this Guidance applies.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator should assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

3. Domestic Violence Prevention/ Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. This program is consistent with Title VI principles.

D. Framework for Creating a Model Plan

The following is an example of a framework for a model LEP policy that is potentially useful for all recipients, but is particularly appropriate for recipients serving and encountering significant and diverse LEP populations. The framework for a model plan incorporates a variety of options and methods for providing meaningful access to LEP persons. Recipients should consider some or all of these options for their plans:

—A formal written LEP policy;
—Identification and assessment of the number or proportion of LEP persons likely to be encountered through a review of census, school district, community agency, recipient and/or other data. The data will clearly be more within the control of some recipients than others. For instance, corrections facilities will likely be able to obtain accurate data more easily than police departments. Nevertheless, police departments should take reasonable steps to identify the language needs of the population they serve.
—Identification of the frequency of contact with LEP language groups.
—Identification of important information, services, and encounters that may require language services.
—Identification of resources available to provide services.
—Posting of signs in waiting areas and public entry points, in several languages, informing people what interpreter services are available and inviting them to identify themselves as needing language assistance.
—Informing LEP suspects, detainees, inmates and others potentially subject to criminal or disciplinary action of their right to language assistance.
—Use of ''I speak'' cards by those who encounter the public in-person, in order to identify the language an LEP person speaks.
—If a record is normally kept on encounters with individuals, noting the language of the LEP person in his or her record.
—Employing bilingual staff in public contact positions such as police officers, 911 operators, guards, etc.
—Contracting with interpreting services that can provide competent interpreters in a variety of languages in a timely manner.
—Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
—An arrangement with a telephone language interpreter line (these can be arranged by, for instance, contacting major telephone services and asking if they have language line services).
—Where certain LEP populations make up a significant number of the population in the recipient's target area and are frequently encountered by the recipient, translation of vital documents into the languages of those LEP populations.
—Notice and training to staff, particularly those with public contact, of the LEP policy and how to access language services.
—Outreach to the LEP population on available language services.
—Appointing a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

As noted, these suggestions for a model plan are particularly appropriate for larger recipients encountering significant LEP populations. However, several of these steps will help smaller recipients prepare for and provide meaningful access when LEP individuals are encountered.

For smaller recipients with few LEP encounters, identifying the most important activities is critical, and determining how to provide language services in those critical areas should be a priority. This may be as simple as accessing a commercially available language line. Plans for such recipients should include monitoring and expanding services as needed.

Appendix B—Coverage and Legal Background

A. Who is Covered?

Title VI applies to every entity that manages or administers a program or activity receiving direct or indirect federal financial assistance from DOJ. The term ''recipients,'' as used in this guidance, includes all covered entities. ''Covered entities'' include any state or local agency, private institution or organization, or any public or private individual that receives federal financial assistance from DOJ directly or through another DOJ recipient. Examples of covered entities include but are not

limited to: Police departments; sheriffs' departments; state departments of corrections; courts; shelters for victims of domestic violence; community corrections programs; juvenile justice programs; and nonprofit organizations with law enforcement missions. DOJ operates over eighty different grant programs that provide funding to these and other different types of non-federal entities. Many of those grants are disbursed to subrecipients, which are also covered entities.

Grants are not the only type of ''federal financial assistance'' to which Title VI applies. Federal financial assistance includes, but is not limited to: Grants and loans of federal funds; grants or donations of federal surplus or real property; details of federal personnel; use of federal facilities; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See 28 CFR 42.102(c). Training, equitable sharing of federally forfeited property, and use of FBI computers can also be considered federal financial assistance.[1]

In 1988, Congress clarified what constitutes a ''program or activity'' covered by Title VI when it enacted the Civil Rights Restoration Act of 1987 (CRRA). The CRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, Title VI covers all parts of the recipient's operations, even if only one part of the agency uses the federal assistance. For example, when DOJ provides federal financial assistance to a state department of corrections to improve a particular prison facility, all of the operations of the entire department of corrections—not just the particular prison—are covered by Title VI.[2]

The Department of Justice also has jurisdiction over enforcement of the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (Safe Streets Act). The standards for compliance with Title VI's prohibition against national origin discrimination also apply to the prohibition against national origin discrimination by recipients of Safe Streets Act funds.

B. Legal Background and Authority

The Title VI requirement to provide meaningful access to LEP persons is not new. The Department's position with regard to written language assistance is articulated in 28 CFR 42.405(d)(1), which is contained in the DOJ Coordination Regulations, 28 CFR Part 42, subpart F, issued in 1976. These regulations ''govern the respective obligations of Federal agencies regarding enforcement of Title VI.'' 28 CFR 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau* v. *Nichols,* 414 U.S. 563 (1974). Thus, this Guidance draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 28 CFR Part 42, subpart C, (DOJ Title VI Regulations) and the Title VI regulations of other federal agencies; 28 CFR Part 42, subpart F. Further, this Guidance is issued pursuant to Executive Order 12250, *reprinted* at 42 U.S.C. 2000d, note; Executive Order 13166, 65 FR 50121 (August 16, 2000); and is consistent with the DOJ ''Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),'' reprinted at 65 FR 50123 (August 16, 2000).

For additional background on Title VI and its methods of enforcement, see the DOJ *Title VI Legal Manual* (September, 1998); DOJ's *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998); DOJ Guidelines for the Enforcement of Title VI, 28 CFR 50.3; the Attorney General's ''Memorandum for Heads of Departments and Agencies that Provide Federal Financial Assistance Regarding the Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964'' (July 14, 1994); and the Assistant Attorney General for Civil Rights' ''Policy Guidance Document: Enforcement of Title VI and Related Statutes in Block Grant-Type Programs'' (January 28, 1999).[3]

1. Existing State and Local Laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local ''English-only'' laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

2. Basic Requirements Under Title VI

Title VI prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The term ''program or activity'' is broadly defined. 42 U.S.C. 2000d–4a.

On its face, Title VI prohibits only intentional discrimination.[4] However, virtually every federal agency, including DOJ, that grants federal financial assistance has promulgated regulations implementing Title VI. Those regulations prohibit recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' and ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination'' or have ''the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 28 CFR 42.04(b)(2). The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.[5]

[1] *See* Appendix A to Subpart C of the Department of Justice's regulations implementing Title VI of the Civil Rights Act of 1964 (Subpart C, 28 CFR 42.101–42.112).

[2] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the specific entity that is out of compliance—*e.g.,* a particular prison—would be terminated. 42 U.S.C. 2000d–1.

[3] The documents referenced in this section are available for viewing or downloading at *http://www.usdoj.gov/crt/cor.*

[4] *Alexander* v. *Choate,* 469 U.S. 287, 293 (1985).

[5] *Id.* at 293–294; *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642–645 (Stevens, Brennan, Blackmun, JJ.); *Lau* v. *Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). Further, in a July 24, 1994, Memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning Use of the

In *Lau* v. *Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted similar U.S. Department of Education regulations to require recipients of federal financial assistance to ensure, in appropriate circumstances, that language barriers did not exclude LEP persons from effective participation in federally assisted programs or activities. In *Lau*, a recipient provided the same services—an education provided solely in English—for a group of students who did not speak English as it did for students who did speak English. In finding for the Chinese-American students, the Court held that, under these circumstances, the school's practice violated the Title VI regulations' prohibition against discrimination on the basis of national origin. The Court observed that ''[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by'' the Title VI implementing regulations.[6]

While *Lau* arose in the educational context, its core holding—that the failure to address limited English proficiency among beneficiary classes could constitute national origin discrimination in violation of Title VI—has equal vitality with respect to any federally assisted program or activity providing services to the public.[7]

The failure to provide language assistance has significant discriminatory effects on the basis of national origin. The Department of Justice has consistently adhered to the view that these effects place the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.[8] Also, existing language barriers may reflect underlying intentional or invidious discrimination of the type prohibited directly by Title VI itself.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, *see Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another non-pretextual ''substantial legitimate justification for the challenged practice'' and there is no comparably effective alternative practice with less discriminatory affects. *Elston* v. *Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance* v. *Giuliani,* 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are job-related and ''consistent with business necessity'' and there is no equally effective ''alternative employment practice'' that is less discriminatory. 42 U.S.C. 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander* v. *Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be ''reasonable'' not to take affirmative steps to provide further access.

Executive Order 13166 reaffirms and clarifies the obligation to eliminate limited English proficiency as a barrier to full and meaningful participation in federally assisted programs and activities. 65 FR 50121 (August 16, 2000). That order states, in part:

> The Federal Government is committed to improving the accessibility of * * * services to eligible [limited English proficiency] persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English * * * [E]ach Federal agency shall * * * work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries * * *. [R]ecipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.[9]

The Executive Order requires each federal agency to develop agency-specific LEP guidance for recipients of federal financial assistance. As an aid in developing this Guidance, the Executive Order incorporates the Department of Justice's Policy Guidance Document: ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ('LEP Guidance')'' issued contemporaneously with the Executive Order.[10] That general LEP Guidance ''sets forth the compliance standards that recipients must follow to ensure that programs and activities they normally provide in English are accessible to LEP persons.'' [11] This LEP Guidance for DOJ Recipients represents the application of DOJ's general LEP Guidance to recipients of DOJ's federal financial assistance.

While the Department of Justice's Coordination Regulation, 28 CFR 42.405(d)(1),[12] expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations.

Oral communication between recipients and beneficiaries, clients, customers, wards, or other members of the public often is a necessary part of the exchange of information. In some cases, ''meaningful opportunity'' to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In other circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request.

Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964, the Attorney General stated that each agency ''should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.''

[6] 414 U.S. at 568. Congress manifested its approval of the *Lau* decision by enacting provisions in the Education Amendments of 1974, Pub. L. 93–380, secs. 105, 204, 88 Stat. 503–512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401, *et seq.*, which provided federal financial assistance to school districts to provide language services to LEP students.

[7] For cases outside the educational context, *see, e.g., Sandoval* v. *Hagan,* 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed,* 197 F.3d 484, (11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98–6598–II), *petition for certiorari granted, Alexander* v. *Sandoval* 121 S. Ct. 28 (Sept. 26, 2000) (No. 99–1908) (giving drivers' license tests only in English violates Title VI); and *Pabon* v. *Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

[8] *See, e.g.*, 28 CFR 42.405(d)(1).

[9] Section 1, Executive Order 13166.

[10] LEP Guidance, 65 FR 50123.

[11] *See* Executive Order 13166 at Section 1.

[12] Section 42.405(d)(1) states: ''Where a significant number or proportion of the population eligible to be served or likely to be affected by a federally assisted program (*e.g.*, affected by relocation) needs service or information in a language other than English in order effectively to be informed or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.'' This LEP Guidance for DOJ Recipients is intended to clarify obligations under this regulation and further obligations under Title VI to provide language services outside of the context of such written documents.

Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons ''effectively to be informed of or to participate in the program.'' This Guidance provides information to recipients on how to comply with the meaningful access requirement.

D. Explanation of Title VI Compliance Procedures

This Guidance, including appendices, is not intended to be exhaustive. DOJ recipients have considerable flexibility in determining how to comply with their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, DOJ recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOJ encourages recipients to document efforts to comply with the provisions of this Guidance. DOJ will make assessments on a case-by-case basis and will consider the four factors in assessing whether the steps taken by a DOJ recipient provide meaningful access.

DOJ enforces Title VI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. In addition, aggrieved individuals may seek judicial relief.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing, and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings.

DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assist recipients in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

In determining a recipient's compliance with Title VI, DOJ's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits.

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January 16, 2001

Part XI

The President

Memorandum of March 3, 2000—Delegation of Authority To Transmit Report on Cooperative Projects With Russia

Federal Register
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Tuesday, January 16, 2001

Presidential Documents

Title 3—

The President

Memorandum of March 3, 2000

Delegation of Authority To Transmit Report on Cooperative Projects With Russia

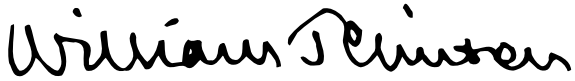
Memorandum for the Secretary of Defense

By authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, I hereby delegate to the Secretary of Defense the duties and responsibilities vested in the President by section 2705(d) of Division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–844). Such duties and responsibilities shall be exercised subject to the concurrence of the Secretary of State.

The reporting requirements delegated by this memorandum to the Secretary of Defense may be redelegated not lower than the Under Secretary level. The Department of Defense shall obtain clearance on the report from the Office of Management and Budget prior to its submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be referenced to such Act or its provisions as may be amended from time to time.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 3, 2000

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Public Laws Electronic Notification Service (PENS)

Note: PENS will resume service when bills are enacted into law during the next session of Congress. This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

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